104

WATER RIGHTS

Y 4.R 31/3:104-47

Water Rights, Serial No. 104-47, 10...

HEARINGS

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER RESOURCES

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

EXAMINING THE PROBLEMS THAT STATES ARE FACING IN WATER SUPPLY

OCTOBER 4, 1995—HERMISTON, OR
OCTOBER 5, 1995—BOISE, ID

Serial No. 104–47

Printed for the use of the Committee on Resources

U.S. GOVERNMENT PRINTING OFFICE

21–090CC WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-052227-7

104

WATER RIGHTS

Y 4.R 31/3:104-47

Water Rights, Serial No. 104-47, 10...

HEARINGS

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER RESOURCES

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

EXAMINING THE PROBLEMS THAT STATES ARE FACING IN WATER SUPPLY

OCTOBER 4, 1995—HERMISTON, OR
OCTOBER 5, 1995—BOISE, ID

Serial No. 104–47

Printed for the use of the Committee on Resources

U.S. GOVERNMENT PRINTING OFFICE

21–090CC WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-052227-7

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN J. DUNCAN, Jr., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE ALLARD, Colorado
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
PETER G. TORKILDSEN, Massachusetts
J.D. HAYWORTH, Arizona
FRANK A. CREMEANS, Ohio
BARBARA CUBIN, Wyoming
WES COOLEY, Oregon
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
WALTER B. JONES, Jr., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
RICHARD (DOC) HASTINGS, Washington
JACK METCALF, Washington
JAMES B. LONGLEY, Jr., Maine
JOHN B. SHADEGG, Arizona
JOHN E. ENSIGN, Nevada

GEORGE MILLER, California
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
SAM GEJDENSON, Connecticut
BILL RICHARDSON, New Mexico
PETER A. DeFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
TIM JOHNSON, South Dakota
NEIL ABERCROMBIE, Hawaii
GERRY E. STUDDS, Massachusetts
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, Jr., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELÓ, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
SAM FARR, California
PATRICK J. KENNEDY, Rhode Island

Daniel Val Kish, *Chief of Staff*
David Dye, *Chief Counsel*
Christine Kennedy, *Chief Clerk*
John Lawrence, *Democratic Staff Director*

Subcommittee on Water and Power Resources

JOHN T. DOOLITTLE, California, *Chairman*

JAMES V. HANSEN, Utah
WAYNE ALLARD, Colorado
RICHARD W. POMBO, California
FRANK A. CREMEANS, Ohio
WES COOLEY, Oregon
HELEN CHENOWETH, Idaho
GEORGE P. RADANOVICH, California
WILLIAM M. (MAC) THORNBERRY, Texas
RICHARD (DOC) HASTINGS, Washington
JOHN B. SHADEGG, Arizona
JOHN E. ENSIGN, Nevada

PETER A. DeFAZIO, Oregon
GEORGE MILLER, California
BRUCE F. VENTO, Minnesota
SAM GEJDENSON, Connecticut
OWEN B. PICKETT, Virginia
CALVIN M. DOOLEY, California
MAURICE D. HINCHEY, New York
SAM FARR, California
_____ _____
_____ _____

Robert Faber, *Staff Director/Counsel*
Valerie West, *Professional Staff*
Christopher Stearns, *Democratic Counsel*

CONTENTS

WATER RIGHTS IN OREGON

	Page
Hearing held October 4, 1995	1
Statement of Members:	
Doolittle, Hon. John T., a U.S. Representative from California, and Chairman, Subcommittee on Water and Power Resources	1
Cooley, Hon. Wes, a U.S. Representative from Oregon	2
Statement of Witnesses:	
Armstrong, Don, Chairman, Hermiston 2000	10
Prepared statement	68
Benson, Reed, WaterWatch of Oregon	36
Prepared statement	91
Breese, Douglas, Oregon Farm Bureau Board of Directors	52
Supplemental material	114
Cooper, Scott, Executive Director, Prineville-Crook County Chamber of Commerce	55
Eldrige, Steve, General Manager, Umatilla Electric Cooperative	31
Prepared statement	77
Harkenrider, Hon. Frank, Mayor, Hermiston, OR	1
Hart, Joyce, Oregon Wheat League	34
Prepared statement	81
Hoeffel, Robert E., consultant, Oregon Water Coalition (prepared statement)	141
Johnson, Richard, Director, West Extension Irrigation District	6
Keys, John, Regional Director, Bureau of Reclamations, Department of the Interior	3
Prepared statement	64
McCabe, Mike, Commissioner, Crook County, Oregon	51
Moore, Hugh, Secretary-Manager, Ochoco Irrigation District	49
Prepared statement	103
Myrum, Thomas G., Coordinator, Umatilla Basin Irrigation Districts	7
Norris, C.R. "Chuck", a State Representative in Oregon (prepared statement)	127
Reuter, Robert M., Chairman, Westland Irrigation District	12
Rew, Lawrence B., Chair, Umatilla Basin Watershed Council (prepared statement)	123
Sampson, Donald, Chairman, Board of Trustees, Confederated Tribes of the Umatilla Indian Reservation	27
Sanders, Stephen E.A., Oregon Assistant Attorney General, Oregon Department of Justice	29
Prepared statement	72
Additional material supplied:	
Proclamation before the State Governors of Oregon and Washington	154
Proclamation to the National Marine Fisheries Service, The Northwest Power Planning Council, Governor John Kitzhaber, Oregon State	158
Communications submitted:	
Benson, Reed D. (WaterWatch): Letter of October 26, 1995, to Subcommittee on Water and Power Resources	167
Eppenbach, Donald V.: Letter of April 28, 1994, to Governors Roberts and Lowry	157
Hart, Kenneth R. (Oregon Grains Com.): Letter of October 2, 1995, to John T. Doolittle	88

Page

Communications submitted—Continued
Loftin, William B. (West Extension Irrigation Dis.): Letter with attachments dated October 2, 1995, to Representative John Doolittle 145
Martin, Steve (Aerial Forest Management Foundation): Letter of November 17, 1995, to Committee on Resources 162
Merlich, Max (Helicopter Loggers Assn.): Letter of October 2, 1995, to American Forest & Paper Association 164
Neal, Gary (Port of Morrow): Letter of October 17, 1995, to Congressman Doolittle 143
Sanders, Stephen E.A.:
Letter of November 8, 1995, with attachment to Committee on Resources 169
Memorandum of October 4, 1995, to Subcommittee on Water and Power Resources 171
Youngman, Glenn (Umatilla County): Letter of October 11, 1995, to Subcommittee on Water and Power Resources 160

WATER RIGHTS IN IDAHO

Hearing held October 5, 1995, Boise, ID 175
Statement of Members:
Chenoweth, Hon. Helen, a U.S. Representative from Idaho 176
Prepared statement 234
Craig, Hon. Larry E., a U.S. Senator from Idaho 178
Crapo, Hon. Michael D., a U.S. Representative from Idaho 330
Doolittle, Hon. John T., a U.S. Representative from California, and Chairman, Subcommittee on Water and Power Resources 175
Kempthorne, Hon. Dirk, a U.S. Senator from Idaho 321
Statement of Witnesses:
Barraclough, Jack, State Representative in Idaho 225
Batt, Hon. Philip E., Governor, State of Idaho 179
Prepared statement 238
Boyer, Lionel Q., Fisheries Policy Representative, Shoshone-Bannock Tribes 221
Prepared statement 308
Campbell, Scott, Esq., Elam & Burke, P.A. 204
Prepared statement 281
Campbell, Steve 209
Prepared statement 294
Cuddy, Charles D., State Representative in Idaho 185
Prepared statement 248
Davis, Julia, Vice Chairman, Nez Perce Tribe 187
Dreher, Karl, Director, Idaho Department of Water Resources 181
Geary, Tom, President, Idaho Farm Bureau Federation (prepared statement) 324
Grant, Fred Kelly, Owyhee County Land Use Planning Committee 189
Prepared statement 270
Keys, John, III, Regional Director, Bureau of Reclamation, Department of the Interior 183
Prepared statement 244
Lucas, Laird J., Land and Water Fund of the Rockies 223
Prepared statement 313
Mader, Daniel K., State Representative in Idaho 219
Martin, Susan, Snake River Basin Office, Fish and Wildlife Service 183
Purdy, Viki 206
Prepared statement 291
Takasugi, Patrick 212
Prepared statement 303
Wilson, Wendy L., Executive Director, Idaho Rivers United 210
Prepared statement 297
Additional material supplied:
Army Corps of Engineers: Excerpt from "Columbia River and Tributaries Review Study" 326
Woodworth, John R. (Fish Passage, Inc.): List of Exhibits submitted 323

WATER RIGHTS IN OREGON

WEDNESDAY, OCTOBER 4, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON WATER AND POWER RESOURCES, COMMITTEE ON RESOURCES,
Hermiston, OR.

The subcommittee met, pursuant to call at 3:15 p.m., in the Hermiston Community Center, Hermiston, Oregon, Hon. John T. Doolittle (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. FRANK HARKENRIDER, MAYOR OF HERMISTON, OR

Mr. HARKENRIDER. I would like to welcome everybody to our brand new community center, and the very, very first Congressional hearing in the city of Hermiston. They said keep it short, I could probably talk for 20 minutes—I will not do that.

I want to congratulate this Committee for setting up this hearing, and before I get off the mike here, I have got to give them our logo from the city of Hermiston, it is a watermelon pin. I want you people to remember it takes a lot of water to grow watermelons, potatoes, corn, you name it, alfalfa and wheat. And do not forget that. And thanks for coming. Here is our logo.

STATEMENT OF THE HONORABLE JOHN T. DOOLITTLE, A U.S. REPRESENTATIVE FROM CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER RESOURCES

Mr. DOOLITTLE. Thank you very much, Mr. Mayor, we appreciate your graciousness in helping us set up this hearing, and thank you for that nice welcome.

The Subcommittee on Water and Power Resources will come to order. My name is John Doolittle, I am Chairman of this Subcommittee. I represent a district in northern California near the Sacramento area.

I want to welcome our witnesses here today. We look forward to hearing your statements. I also want to thank Representative Wes Cooley for his leadership in requesting this hearing in order for the Subcommittee to examine water supply pressures facing Oregonians.

I know that these pressures are great. The listing of several salmon species on the Columbia and Snake River system as endangered, the waterspreading issue on the Umatilla Project, demands for more water for instream flows and other uses are all placing pressure on the Bureau of Reclamation contractors. However, the result of these pressures cannot be the Federalization of water from Reclamation projects. State governments have supremacy in

the allocation of water for beneficial use and this Congress is determined to ensure that state supremacy is maintained.

We all recognize that water is a precious commodity in the arid west. In this region, the Columbia/Snake River system is truly the lifeblood of the northwest. This system provides irrigation and drinking water, navigation and hydroelectric power, as well as habitat for numerous fish species.

Entire economies have been built around the development of the Columbia and Snake Rivers. We will hear today from witnesses who rely on the river and its tributaries for water supplies, hydroelectric power and transportation. We will also hear from the tribes which rely on a healthy river system for fisheries. Again, we all look forward to hearing your assessment of the challenges facing water managers and your views on how to resolve some of these issues.

With respect to the Umatilla Project, I believe that the issue of boundary changes for districts should be resolved in a manner that preserves the agricultural economy in the Umatilla Basin. In previous testimony before this Subcommittee, the Bureau of Reclamation has stated that they knew for a long time that the districts were transferring water to lands outside the district boundaries. It is my understanding that in some instances, Reclamation actually applied to the Oregon Water Resources Department for the transfer. Using the waterspreading approach to force districts to give up water on transfer lands when the transfers have occurred pursuant to Oregon law is wrong.

The Subcommittee is equally concerned about the continuing safety of dam problems at Ochoco Dam. Less than one year after the completion of major safety of dams work that required farmers to forego water in 1994, the dam has developed a large sinkhole in the vicinity of the new, extended outlet pipe. I look forward to hearing how the Bureau intends to fix this problem permanently in order to bring stability of supply to irrigators and to ensure flood control protection for the city of Prineville and others downstream.

I would like to recognize Mr. Cooley for his statement.

STATEMENT OF THE HONORABLE WES COOLEY, A U.S. REPRESENTATIVE FROM OREGON

Mr. COOLEY. Thank you, Mr. Chairman. I want to thank all the audience and the witnesses for attending this very important hearing today. It is always nice to see old friends and be very pleased that we are able to hold this formal meeting in the district so you can all be part of the first-hand basis of the project. I also want to express my sincere gratitude to Chairman Doolittle for granting this hearing opportunity and thank my fellow committee members who have taken the time to travel to this district and listen to the needs of our local communities. I also want to mention the great work our staff people do for taking a lot of time to prepare for this kind of an event.

It is my hope that today, we will take a solid, detailed look at the Bureau of Reclamation activities in the Umatilla Basin, and with regards to the Ochoco Dam in Prineville, Oregon. I have great heartburn over many of the Bureau's activities and I am committed to hold the Bureau accountable to its actions. And like Chairman

Doolittle said, see that state supremacy is upheld in allocation of water for beneficial use.

The change of the so-called waterspreading costly and ineffective drawdowns and the continued dilemma at the Ochoco Dam have placed our agricultural communities in peril. Water is the lifeblood of the community and they are being pushed by unjust edicts from Washington, D.C. This must stop, and that is all there is to it. We have to stop this process. Our communities have given up a lot in the process, great personal and financial costs and commitments have gone to no avail in the past.

I look forward to hearing from the witnesses on these very important issues, and once again, I want to thank all of you for coming and I want to thank Chairman Doolittle and the Members of Congress who took their time, their personal time off, to come to our community and listen to some of our problems. These people have a lot to do with the outcome and the future of water in the northwest and in the west.

I want to thank you very much.

Mr. DOOLITTLE. Do other members of the Subcommittee wish to offer any opening statement? Anything you have certainly can be submitted for the record at a later point.

[No response.]

Mr. DOOLITTLE. With that then, let me call up the first panel. There are three panels of witnesses and, the members of the first panel, we would ask you to come up and take your seats and we will begin. We would ask you, in view of the number of witnesses we have, to keep your statements to the five minutes allotted. These lights, red, yellow and green, will indicate your use of the time, in the final minute the yellow light will go on and then when the red light is on, it is time to wrap up.

So let me ask if John Keys, Rick Johnson, Tom Myrum, Don Armstrong and Bob Reuter will please come up and take their seats at the witness table.

Mr. Keys is the Regional Director of the Bureau of Reclamation for the U.S. Department of the Interior. Rick Johnson represents the West Extension Irrigation District. Tom Myrum is the Umatilla Basin Coordinator. Don Armstrong represents Hermiston 2000. Mr. Bob Reuter represents the Westland Irrigation District.

Mr. Keys, we will begin with you.

STATEMENT OF JOHN KEYS, REGIONAL DIRECTOR, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Mr. KEYS. Good afternoon. I am John Keys, Regional Director for the Pacific Northwest Region of the Bureau of Reclamation. It is a pleasure to be here and discuss Oregon issues and Columbia Basin issues with your panel this afternoon. I have submitted a statement and I would ask that it be included in the record, please, and I will summarize.

The Reclamation Act of 1902 contains Section 8. Section 8 of the 1902 Reclamation Act says that when the Bureau of Reclamation builds an irrigation project, we will obtain from the state in which that project is built, a water right to build the project and then we will build and operate it within that right.

Currently we have under reclamation projects about 2.7 million acres irrigation in the Columbia River Basin. I can assure you that all of those projects are being operated within the state water rights that were granted for them when they were constructed. I bring to you a commitment from the Secretary of Interior, from the Commissioner of Reclamation and from the Regional Director in the Bureau of Reclamation in this Region, to work with those states and within those water rights. I think you will have seen a commitment to state water rights in the appointment of the new Commissioner for Reclamation by Mr. Babbitt.

There are subsequent laws that we have to work with in dealing with reclamation laws—National Environmental Policy Act, the Endangered Species Act, Reclamation Reform Act are a few of them that we have to work with.

With that said on water rights, I would address my comments to two different topics today. One is the Umatilla Basin project, the other is the Endangered Species Act under which the salmon have been listed in the Columbia River. Irrigation in this basin, in the Umatilla Basin, was started by private individuals much before the start of this century. The Bureau of Reclamation came on and in order to help out built McKay Dam and Reservoir. Its purpose was to provide supplemental water for irrigation in the basin and at the same time we helped build facilities to deliver that water for two irrigation districts.

As a result of all of that irrigation and the projects that we have built, the salmon went extinct. There were some runs of steelhead that had a small number left, but the salmon were gone at that time. The fishing rights of the Confederated Tribes of the Umatilla Indian Reservation were ones that were of great concern to the tribes. In working with the tribes, the irrigators, the state of Oregon, all of the Federal agencies involved, we were able to work with the Congress for the Umatilla Basin Project Act in 1988 that allowed us to come in and address that portion of claims by the Indian tribes, the ones that dealt with the fishery in the Umatilla River.

Basically, if you look at the Umatilla fishery, the United States government sold the water out of the river twice. We made it available under the Umatilla Project and decisions by the courts in the 1960's said that it should be available for the tribes, but there was no water left. The project that we came up with actually replaced that water being used for irrigation with Columbia River water, so that the Umatilla River water could be left in the Umatilla River for the fish. That is the purpose of the project. Phase one is complete. That is the phase that delivers water into the West Extension Irrigation District. Phase two is the main Columbia River pumping plant. The pumping plant is done, we are working on the canals and laterals that go along with it now. It is all scheduled for completion in 1997 and 1998.

Now, so far we have had outstanding cooperation with the tribes, the state, local organizations, the other Federal agencies, especially Bonneville Power Administration who provides the power for the pumps and the pumping plant. So that part of it is going very well.

One of the points of contention in this whole thing has been the boundary expansions. Yes, the legislation allowed for boundary ex-

pansion. It did not say how to do it, it did not give details and so forth. In doing that, we had to look at the other laws that we had to deal with—the National Environmental Policy Act, the Endangered Species Act and so forth, and other water users who felt that the practice that had been identified in a lot of irrigation districts, was detrimental to instream flows for fish. In this basin, to be specific, if the return flows from irrigation were not there, it would take more water than was being provided by the Umatilla Basin Project to provide for the return of fish. That was one of the issues that we were trying to deal with. I would say that we have been struggling with that issue. We have been struggling in Reclamation mightily with the issue over the past four to five years. I could not sit here today and tell you what is right in the issue, because the issue is so complex on different irrigation projects. I will tell you that in 1995, we reached agreement with the irrigation districts in this basin. They put up some water to make available for the fish. We entered into interim contracts with them so that they got water this year. In the future, we look for solidification of those contracts and agreements with the irrigation people and with the tribes and the fisheries people.

The other item that I would address is the Endangered Species Act as it deals with the salmon in the whole basin. There were four species of salmon listed as endangered in 1991—three Chinook and one Sockeye. We have worked closely with all of the agencies from 1991 through this year in providing water to meet target flows in the Columbia River. The biological opinions that were issued by the National Marine Fisheries Service on operations of the Federal Columbia power system have been implemented, and Reclamation has been a full partner in doing that. We have shifted water from Grand Coulee Reservoir, from Hungry Horse Reservoir in Montana to help meet those flows. We have obtained water from irrigators in the state of Idaho to do that, and here, let me tell you that all of that water has been provided within state water rights and it has been obtained either by purchase or rental from willing sellers of that water. We have been part of the solution. So far, so good. The current biological opinion runs through 1998. We are in the middle of a large water right change, working with the state of Idaho to make the change to provide that water, and we think that we are doing everything in accordance with those state rights that we have and are working with.

Mr. Chairman, that concludes my summary. I would stand for questions later whenever you would like.

[The statement of Mr. Keys may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. We are going to take each member of this panel and when the last person is finished, then we will go through our round of questions. By the way, I would just indicate that your entire prepared statements will be inserted in the record, so whatever you summarize today, do not worry that you will have the rest left out.

With that, I would like to recognize Mr. Rick Johnson from the West Extension Irrigation District.

STATEMENT OF RICHARD JOHNSON, DIRECTOR, WEST EXTENSION IRRIGATION DISTRICT

Mr. JOHNSON. Good afternoon, Mr. Chairman, and welcome to eastern Oregon.

Mr. DOOLITTLE. Thank you.

Mr. JOHNSON. It is nice to see the Committee here. I am here to address the hearing as both a representative of West Extension Irrigation District and as one of the speakers representing the four districts in the Umatilla Basin. It is my intent to convey to this committee a perspective which is held in common by these districts.

We are proud of the accomplishments and the vitality of our rural communities in Oregon. It is our hope that you will see and hear first-hand some of the successful, efficient and productive uses of our valuable water resources that characterize irrigation in the Umatilla Basin. This model of community and economy is exactly the goal envisioned by the authors of the Reclamation Act of 1902. We offer for your deliberations an example of what can occur through committed local energies, a responsive Federal agency and a partnership of purpose.

The districts are not blind to a new emphasis on the value of water in modern society. We are not unmindful of the benefits of the Umatilla Basin Project Act. This is precisely why area irrigators pursue water conservation and increased efficiency in a diver[illegible]on. Satisfaction abounds throughout this region as a result of the successful reintroduction of salmon and steelhead trout to the Umatilla River. There are tangible benefits from the improved flows. These realities should not be a limit to our cooperation, nor a limit on the potential of the Umatilla Basin Project.

Unfortunately, we now fear a strained and ailing relationship exists between the Bureau of Reclamation, irrigation districts and water interests in this basin. Effective discourse between the area's informed Reclamation personnel and the legitimate local water interests have been replaced by edicts from Washington, D.C. We have witnessed the bifurcation of the Bureau's intent, without the benefit of local consultation. Our partnership appears to have been sacrificed to a political opportunity, specifically this opportunity is called waterspreading.

Waterspreading has become Reclamation's mantra for repudiating the accomplishments of a cooperative past. In reality, the movement to end the so-called waterspreading is merely a feeble justification for Reclamation failing to honor agreements and admitting to the knowledge of historical practices under which we have defined our relationship. Allegations of waterspreading apparently relieve Reclamation of its obligation to work in good faith with its constituents.

Reclamation, under its most recent Commissioner's regime, has expressed new Federal intentions under the initiative to reinvent government. Apparently the Bureau of Reclamation has ceased to be a water development agency and presumes to become a water marketing agency. Of the stated mechanisms to reach this end is their intent to reprice water, vacate contracts where appropriate, and interpret agency policy as a means of removing water from ag-

ricultural use. As you might conclude, we feel this posture abandons the successful approach of the past and casts a cloud of uncertainty on the opportunity for future cooperation.

To this dynamic of events, we add the emergence of the special interest groups. Like late arrivals to a dying carcass, they offer their perspective and inertia to the collapse of local cooperation. These interests share a purpose with the Bureau's new-found mission, reallocation of the western water resources. To the agency policy debate, they have added collusion and obstruction as tactics to impede amicable local resolution of the problems.

Such is the picture in our minds, what I characterized as the state of the partnership with Reclamation. This perspective does not balance with the potential of the Umatilla Basin Project Act. This perspective does not foster the historical successes we have been able to cite, nor our highest hopes for the future.

We believe Congress should be aware of our viewpoint. We hold that Congress has a natural role in defining the mission of the Bureau of Reclamation and in facilitating solutions which complement local cooperation.

How can Congress remedy these situations? We would ask that Congress help to protect our success from those who seek to undo, even if there is a need to redo. Congress should provide a preference for local solutions which occur through local cooperations. The Umatilla Basin Project is a fine example of local cooperation. The Umatilla Basin Project is a cornerstone of solid foundation for the salmon's resurgence.

The participation of all groups must be proportional to their commitment to the solution. Those who arrive late and seek to gain personal benefit at the risk of loss of decades of local cooperation should be shunned. The Umatilla Basin Project must remain on track. Outsiders seek new compromises to extract unnecessary benefits. The remedy issue is not a process of compromise, it is one of cooperation.

In summary, we feel there is good reason for us to hold out hope for resurrecting a working partnership between water users, the Federal agency and other river interests. These hearings, the current Congressional posture and the pending leadership transition within Reclamation are reasons for us to be hopeful. There remains an opportunity for us to do what is proper for the river and its watershed, the local communities and the beneficiaries of the Federal involvement in the Umatilla Basin.

We need your help to convince Reclamation that the solution is allowing the Umatilla Basin Project to reach its original goals. We need Congress to tell special interest groups that local solutions are preferred solutions.

Thank you very much for this opportunity to testify.

Mr. DOOLITTLE. Thank you, sir. Mr. Tom Myrum, Umatilla Basin Coordinator, is recognized.

STATEMENT OF THOMAS G. MYRUM, COORDINATOR, UMATILLA BASIN IRRIGATION DISTRICTS

Mr. MYRUM. Good afternoon. My name is Tom Myrum and I am testifying on behalf of the Umatilla Basin irrigation districts on the subject of so-called waterspreading. Thank you for this opportunity

to present oral testimony before this House Subcommittee. I thank you Chairman Doolittle and Representative Cooley for holding this in Hermiston.

The Umatilla Basin irrigation districts are each a part of the Bureau of Reclamation's Umatilla Project. The districts are the Hermiston Irrigation District, the Stanfield Irrigation District, the West Extension Irrigation District and the Westland Irrigation District. The districts have historically enjoyed a good working relationship with the Bureau of Reclamation and the districts acknowledge that Reclamation has played a vital role in the development of irrigated agriculture in this area since the early part of this century. It is Reclamation's more recent role as a water management agency which has caused turmoil in this Basin and with other Reclamation projects throughout the western United States.

The new Reclamation has become what its former Commissioner has called a water management agency. I presume that with the declining need for further irrigation related construction, the agency is looking for its new mission. I believe that Reclamation's new water management mission has led to the implementation of policies which are designed to cause a wholesale reallocation of Reclamation water toward instream use and an open market for buying and selling water in the increasingly populated and arid west. Reclamation has been in search of a vehicle to promote this new agenda, and that vehicle has been called waterspreading.

Reclamation has defined waterspreading to be the use of Federal project water on lands not authorized for such use. This occurs in two prevalent scenarios—water which is delivered to lands outside of federally recognized district boundaries and water delivered to land not properly classified by Reclamation as irrigable.

Some have had the naive and poorly informed opinion that criminal sanctions should apply to those guilty of waterspreading. Waterspreading is a matter of contractual interpretation and in no way falls outside of Federal statutes, either civil or criminal. Instead, changes in district water use practices have occurred as a result of the natural consequences of irrigation district necessity and innovation.

Urbanization has caused some districts to seek customers on the fringes of districts, while irrigation technology has allowed for the technologically advanced farmers to deliver water to lands formerly thought to be non-irrigable. In all cases, waterspreading has not resulted in irrigation districts using more water than they have a contractual right to use. Reports of water thefts have been greatly exaggerated by those who stand to gain by their bold-faced hyperbole.

Waterspreading is the brainchild of environmentalists and their friends bent on reallocating Reclamation water to instream uses. Unfortunately, Reclamation has become a willing partner in the misinformation about what constitutes waterspreading. In fact, Reclamation has used waterspreading as a golden opportunity to reprice water in anticipation of future budget shortfalls.

Reclamation has recently decided that a west-wide waterspreading policy is impractical to implement and thus, the problem should be handled on a case-by-case basis. Reclamation has called this the partnership approach to ending waterspreading.

The Umatilla Basin situation provides a prime example of how Reclamation's partnership approach to solving the problem of waterspreading will cost irrigators more than they bargained for.

In its quest to end waterspreading in the Umatilla Basin, Reclamation has required the districts to enter into interim agreements for delivery of Federal water to the so-called waterspread lands. These contracts have called for the districts to provide a portion of their water for instream uses, have repriced the water deliveries to these lands by $8 per acre, have required NEPA compliance to adjust district boundaries costing as much as $750,000, and have called for special mitigation measures such as riparian and water-quality studies.

The cost to the districts has been enormous. The cost of water provided for instream flows is felt the most by the farmer and this cost is passed on to the consumer. The cost of employing attorneys to protect district rights has put a real financial burden on the districts. The highest cost the districts face is the potential erosion of their contractual allotment of water from Reclamation facilities. This cost will be felt by the districts and their farmers for many generations.

The Umatilla Basin districts are paying a high price of doing business with Reclamation in a basin that is rapidly becoming the salmon success story of the west. Umatilla Basin districts joined in support of the 1988 Umatilla Basin Project Act, which provides for pumping of Columbia River water to irrigation districts so that the districts can either leave water instream for fish or leave water in McKay Reservoir to be later released for the benefit of migrating salmon and steelhead. The districts' support was crucial to the passage of the legislation which authorized this project.

The Umatilla Project's stated purposes were (1) to provide flows for fish and (2) to mitigate for the effects of all irrigated agriculture on the Umatilla River. Additionally, the project was not to cost the districts any money and was not to affect irrigation water resources. The Project Act specifically gives the Secretary of the Interior the right to amend district boundaries to reflect project water deliveries on October 1, 1988. Unfortunately, the Secretary of the Interior's designated agent, the Commissioner of Reclamation has not chosen to live up to the agreement which led to the districts' support of the Basin Project. Instead, the Commissioner would have the districts pay more for water and give up portions of their contractual water rights. This was not what the districts agreed to in 1988.

Congressman Cooley has introduced House Bill 2392 into the House Water and Power Committee. The language of this bill accurately reflects the deal the districts believed that they had made in 1988. H.R. 2392 will amend district boundaries to conform with historical irrigation deliveries as of October 1, 1988.

Changing district boundaries will not result in any increase in district water use, increase the number of acres historically served by the districts, or any additional cost to the American taxpayer.

Changing district boundaries will ensure that the Umatilla Basin Project Act fulfills its promise to the irrigators and to salmon.

I ask that this Committee approve H.R. 2392 as drafted and submit it for vote to the full House of Representatives.

The salmon and steelhead in Umatilla River are presently benefiting from the resulting pumping projects of the Umatilla Basin Project. The irrigation districts have yet to receive their promised boundary change. The Umatilla Basin irrigation districts' boundary change is long overdue. Passage of this bill is a proper step for making a wrong thing right. The right thing is a boundary change.

Thank you for this opportunity to provide testimony.

Mr. DOOLITTLE. Thank you, sir. Mr. Don Armstrong with Hermiston 2000 is recognized.

STATEMENT OF DON ARMSTRONG, CHAIRMAN, HERMISTON 2000

Mr. ARMSTRONG. Chairman Doolittle and members of the Committee, my name is Don Armstrong and I am the Chair of Hermiston 2000. Hermiston 2000 is a community group involved in the planning, social and economic issues which affect our community. We represent a broad cross section of business and community leaders in our area. I would like to thank you for the opportunity to speak with you today on an issue of vital importance to our community.

The Umatilla Basin Project was a visionary and cooperative solution to resolve conflicts over the use of water from the Umatilla River. The planning for this project began in 1981 as an exemplary cooperative effort between our irrigators, the Confederated Tribes, state and Federal fisheries agencies, the Bureau of Reclamation and the citizens of this basin. Its purpose was to "resolve the need for Umatilla River fishery restoration without impairing the existing irrigation-based economy," and I quote from the EIS on the Umatilla Basin Project. We have fully supported and participated in the goals of the Basin Project which provided for balance of the economic and social needs associated with the use of the Umatilla River.

I am here today in support of irrigated agriculture because we recognize the vital role it plays in our community. There are those who consider agriculture as an unworthy and wasteful enterprise designed only to enrich a ruthless and uncaring corporate farmer. We have a different view. We believe that the ability to farm and the availability of arable land is a precious natural resource which must be protected and developed, and which cannot be taken for granted. Once people realize that there is a scarce amount of farmland in the back room of their local supermarket, they may more easily support the needs of the farmers out here in the vast unknown who provide the real source of the bounty which they take for granted, as they shop for and consume their favorite brands of food. The success of this project, involvement in this project and the impacts of this project are shared by all of us as consumers or farmers.

The Basin Project, as envisioned and developed through Federal legislation and P.L. 100–557, has not been implemented as intended and has in fact become a real threat to the rights and the livelihoods of our irrigators. It is being used as a tool to reduce the irrigated acreage in this area and to extort water from our irrigation districts.

Today, it is my hope that I will provide you a broader understanding of our participation in this project, its impact on our community and the concerns that we have raised.

As a community, we supported the goal of restoring the fishery to the Umatilla River, and we supported the Tribes' efforts to maintain their cultural and social values through this project. There has been a great willingness to compromise to achieve these goals and our irrigators have given up available, legally permitted water for these purposes. They have engaged in good faith negotiations and made numerous accommodations to further the goals of the project. They participated in this project because they believed that it was "for purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland and Stanfield irrigation districts, ..." And I quote that from P.L. 100–557. That promise and purpose has not been fulfilled for our irrigators.

There have been notable successes in the recovery of the fish runs and the fishery associated with the Umatilla River. The flows and quantity of water in the river are at historical highs. Management practices for flow and usage are achieving significant success. Unresolved is the assurance of continued water service to our irrigation districts and the lands which were historically irrigated as of 10/1/88, as promised in the Basin Project.

As you are well aware, the Bureau of Reclamation boundaries are the contractual constraints which are used to ensure the repayment for the project development costs incurred by the Bureau. In this case, the Bureau is using the boundary issue in an attempt to control water use by excluding land from service by BOR project facilities. As a result, 17,000 of the 49,000 acres identified in the Basin Project may be denied service in spite of valid permits for the beneficial use of this water from the state.

This is an issue now characterized as waterspreading, a practice which was recognized in the planning of the Basin Project and around which a significant part of the solution for the project was developed. Any definition of waterspreading must acknowledge that this practice is not the use of additional water but an expanded use of the same water. It is a benefit of conservation and technology applied to water application, resulting in greater beneficial use of this resource. The Basin Project identified the quantity of water received and used by the districts, including water used on out-of-boundary lands. This conserved water is an integral part of the Basin Project exchange.

The boundary changes do not impact the project operations or the exchange amounts around which the Basin Project was designed. The project depends on the quantity of water used by the irrigation districts on the out-of-boundary lands for exchange purposes. Without this exchange, the entire Basin Project operation is jeopardized.

Let me emphasize that whatever the Bureau's concern regarding waterspreading are in this basin, the Umatilla Basin Project was a solution crafted to resolve this perceived problem. It was fully expected and intended that the Basin Project was to provide the mitigation which would resolve this issue in our basin. This resolution

was a significant motivation for concessions by the irrigation districts in the project development negotiations.

Our community has made a commitment through support of the Basin Project and a further expansion of that project to find solutions and compromise which support and enhance the cultural and economic goals of both of our communities. While our irrigators have gotten far less benefit than they expected from the project, there is a continuing desire to improve on the success and the vision of the Basin Project. As good stewards of our natural resources, we all benefit when we can make maximum use and have minimum impact on our environment. Time, technology and experience have provided additional options which can enhance and expand this project. It is time to move forward.

Thank you for your time, for allowing me to speak to you today regarding this important issue for our community. We are a community with a clear sense and connection with our agricultural and our agri-economy. Thank you again.

[The statement of Mr. Armstrong may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Mr. Bob Reuter with the Westland Irrigation District is recognized.

STATEMENT OF ROBERT M. REUTER, CHAIRMAN, WESTLAND IRRIGATION DISTRICT

Mr. REUTER. Thank you for holding this hearing in this area, and thank you, Congressman Cooley, for your concern and support in being able to bring this hearing to the Umatilla Basin.

The Umatilla Basin is well-known for the Umatilla Basin Project Act, as you have heard many times already, and also for the site of the reestablished salmon runs after more than 50 years without any runs. The cooperation of all entities in this basin made these events possible.

Foregone diversions and grants of irrigation water plus grants of irrigation districts' contracted McKay stored water, made the reestablished salmon runs possible over ten years sooner than the Basin Project exchange would have been able to do so. Over 2000 adult salmon are returning every fall as a result of irrigation districts' efforts and the grants of water to this program since 1982. The irrigation districts paid the Bureau for this water.

The Umatilla Basin Project enabling legislation made provisions to provide up to one million dollars to purchase interim water to help enhance these runs. This and other provisions of the Basin Project Act have evidently been ignored by the Bureau of Reclamation personnel, and have not been implemented.

Westland Irrigation District has spent in excess of $1.3 million for water charges, fines, extra charges for stored water, water quality and quantity studies in the basin and legal fees, since the passing of the Umatilla Basin Project Act in 1988. The districts did not receive any credit or acknowledgement for this water or for their cooperation. In fact, the Bureau demanded that the Westland Irrigation District provide almost 20 percent of their McKay contracted water for salmon enhancement in exchange for continued deliveries of McKay water by the district to those lands that the Bureau considered out of the district's boundary. The Bureau threatened to re-

allocate some of this water that is now under contract to Westland by the 1949 contract.

The Bureau send a cease delivery order to the district in 1993 after the district had signed the demanded agreement. The district ceased deliveries when this letter was received. The district still honored their part of the agreement and provided water for the salmon enhancement.

The Commissioner met with the Umatilla district directors in 1994 and gave his word that deliveries to waterspreading acres would not be ceased during the 1994 irrigation season. Westland then made deliveries to these lands receiving McKay water prior to the October 1, 1988, as stated in the Project Act. The Bureau then sent a letter stating this was illegal and the Bureau wanted the district to pay the Bureau $120,000 for those deliveries that were made in 1993 and 1994.

Westland Irrigation District has not used any more water than the 1949 Bureau contract stipulates. Westland does not deliver McKay water to any more acres than were recognized by the Bureau when they accepted the district's 1983 conservation plan. Westland does not deliver McKay water to any more acres than those recognized in the Umatilla Basin Project EIS. The Umatilla Basin Project EIS studied and addressed all of the acres being irrigated prior to 10/1/88 and all of the water being used for irrigated agriculture in the basin. The Umatilla Basin Project Act was the mitigation for all irrigation in the basin. We need the provisions, the intent and the concept of the Umatilla Basin Project Act and the supporting documents implemented and followed.

The Umatilla Basin Project Act needs an amendment and Congressional supervision to carry out the language and intent of this law. We need a legislated boundary change that amends the original Umatilla Basin Project Act, and makes the boundary change mandatory instead of discretionary.

A legislated boundary change will not allow any extra acres to be irrigated, will not allow any more water to be used, will not interfere with any treaty rights, interfere with any state water law and most important, will not cost the government and the taxpayer any extra money.

I have included supporting documents and other information for you to review. I want to thank you for this time and your effort for holding this hearing here. Thank you.

Mr. DOOLITTLE. Thank you, sir.

The Chair would inform the members of his intent to recognize them in the following order for their questions—Mr. Cooley, Mr. Pombo, Mr. Cremeans and Ms. Chenoweth.

You all know, Mr. Cooley, your Representative, and we think he is doing an excellent job in Washington. He is the one who caused this hearing to be held.

Ms. Chenoweth is the Representative from western Idaho and is in her first term.

Mr. Pombo is my neighbor near Sacramento and he represents a portion of that county and the city of Stockton, much of San Joaquin County, most of that county.

Mr. Cremeans represents southeastern Ohio and is here in his first term.

The Chair would recognize Mr. Cooley for questions of the panel.

Mr. COOLEY. Mr. Keys, for the record, I would like to know from the Bureau's standpoint, while land to which water is being applied may be different from lands in the original project boundary in 1988, are the districts taking any larger quantities of water than they have water rights for?

Mr. KEYS. Mr. Chairman, Mr. Cooley, to the best of my knowledge, they are not taking more water than they were entitled to by the original contract.

Mr. COOLEY. Thank you. I will get back for one other question, but I want to ask another question.

Tom Myrum, let me ask you something. A lot of us have looked at the Inspector General's report of last summer talking about waterspreading and what it costs the Federal Government, and estimated that it was like $50 million to $60 million each year for this cost. Could you help me with this, so I can ask Mr. Keys another question? I need to have a confirmation of this, because many of my colleagues, not only here present but in Congress have seen this report.

Mr. MYRUM. Last summer, the Inspector General put out a report estimating that between $50 million and $60 million were lost to the Federal Treasury as a result of waterspreading. I am assuming they based that on the belief that delivery of water to these so-called waterspread lands or new lands would necessarily come under a premium price or an additional cost to the district for providing them to lands which Reclamation would consider not within their existing contracts. However, I do not believe that there is any statutory law or possibly a policy which would back that up. So that $50 million or $60 million was very likely pulled out of thin air as potentially a policy issue that perhaps if this water were charged at $10 per acre foot, it would net the Treasury that much money. But I do not believe under existing contracts, that would be a valid guess. But that is my understanding. In fact, if I remember some of the comments made by the Inspector General's Office last summer is they admitted that perhaps that was inflated or they were not absolutely sure what the basis of that number was.

Mr. COOLEY. Even though there is no more additional water being used, other than the water rights that are presently held.

Mr. MYRUM. Absolutely. The districts have used no more water than they have a contractual right for. The question is whether or not Reclamation could legally charge them an additional fee for use of that water.

Mr. COOLEY. OK. Back to you, Mr. Keys. If there is no more water used and it is not costing the Federal Government any additional money, would the administration object to H.R. 2392, which would solve this dispute and forever decide on the boundaries, which we no longer have in-fights. This would probably save you some litigation problems in the future.

Mr. KEYS. Mr. Chairman, Mr. Cooley, I saw the legislation today for the first time. I would say that I cannot speak for the Inspector General, I do not know where the numbers came from. I know that we were asked for acreages and we gave it to them. We were asked what we felt waterspreading was and we told them. And then they came out with their report.

I would say that if you passed H.R. 2392, it would make my job a lot easier.

Mr. COOLEY. So we could put on the record that more or less you are in favor of H.R. 2392 personally.

Mr. KEYS. Mr. Chairman, Mr. Cooley, let the record show that Mr. Keys supports it, but I cannot speak for the administration.

Mr. COOLEY. Well, but that is a first step forward. I want all of you to remember that because we want to push this legislation through. I think it is very, very important for this area to realize that if we are successful, and I think we will be, of passing this legislation, that the dispute over boundaries and waterspreading will actually go away, and I think we can do that, and now that we have at least a regional manager here agreeing with us, I think this will go a long way in helping us in our efforts in Congress to get this legislation passed. These hearings are very important for those facts, by the way.

Don, I was very much interested in your comments about the community and what it brings into here. If we resolve this on a permanent basis and we get the boundaries changed and let us say get the Bureau possibly away from any kind of problems and we get this settled down, what do you think that this will contribute, let us say in the long run, to the community of having a stable boundary set up, stable 49,000 acres in this Project means to the community economically now and in the future with added value in our processing plants and things like that? Do you have any idea? Can you give us some kind of a feeling for that?

Mr. ARMSTRONG. Well, I do not know that I can give you a number, but I do know that it takes that sword of Damocles that is hanging over our head right now in terms of the potential loss of that acreage and the uncertainty that it creates within the farming community in terms of their financing, their ability to continue their operations. It is a little tough to go to the bank and talk about your operations and your need for your operating line when the first question the bank is going to ask you is how are you doing for water.

Mr. COOLEY. Well, as we know, everything we produce here is exported out, so those are hard dollars coming back in. Can you give me an estimate, being at Hermiston 2000, if we lost 17,000 acres, what you think that would cost the community in dollars?

Mr. ARMSTRONG. I am sorry, I do not have a dollar number, but it would be devastating. This community does depend on our farm economy for its very existence. It was built and grew as a result of irrigated agriculture. You can go back to the growth and the prosperity that this community has seen and it is all tied to the health of our farm economy here.

Mr. COOLEY. We have heard some figures. My time is almost up, so I have to let you go—but we heard some figures today when we were given some presentation by some of the gentlemen who are experts in this area, that the agriculture community here overall, totally combined, was producing about a half a billion dollars a year in total revenues. Do you think that is pretty accurate?

Mr. ARMSTRONG. I believe that that was the revenues, the income created from that, yes.

Mr. COOLEY. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you. Mr. Pombo is recognized.

Mr. POMBO. Thank you, Mr. Chairman.

Mr. Armstrong, just to follow up on the question that Mr. Cooley asked. In other resource industries, when they have been shut down by government action, one of the things that has been talked about is retraining the workers. If we were to shut down irrigated agriculture, what would the workers be retrained to do in this area?

Mr. ARMSTRONG. Logging is out.

[Laughter.]

Mr. ARMSTRONG. I am afraid that I really do not have a good answer for you. But obviously we are talking about taking away the livelihood that supports this community and those individuals, and you know, presumably we could teach them to type and then they would really be creating something. I am afraid I do not have an answer for you that is constructive, because I do not think that if we find ourselves in that situation, that there is not a positive result from that. There is a lot of negative consequences. It is going to be a crisis situation and we are going to talk about taking a whole community or a whole area that has been dislocated and I think this state has a great deal of experience with the dislocation that has taken place with the logging industry.

Mr. POMBO. A lot more than you would like.

Mr. ARMSTRONG. A lot more than we would like, and I do not think they have come up with a good answer of how they find new opportunities for those folks.

Mr. POMBO. Mr. Reuter, in your prepared statement, you say that the Bureau demanded that Westland Irrigation provide 20 percent of their McKay contracted water in exchange for continued deliveries. What was that based upon? What law or what—I am not familiar with that.

Mr REUTER. The Westland Irrigation District was told to give up 20 percent of their water for fish enhancement for the continued deliveries of water to these lands. I do not know under what law or under what regulation they were able to pull this figure from. I do know that the Westland Irrigation District had agreed to help and provide some water in the interim between 1988 and the time that the Umatilla Basin Project Act would be implemented, to help the fish, reestablishment of the fish and for maintaining these fish runs, salmon runs.

Mr. POMBO. You did that on a voluntary basis?

Mr REUTER. Yes, we did. This water was granted up until that time and then we were not—it was an unestablished figure, but at that point, we were told how much we had to give up.

Mr. POMBO. To the best of your knowledge, this is not part of Oregon state water law or Federal law?

Mr. REUTER. That is correct.

Mr. POMBO. Mr. Keys, do you know under what policy or law that that requirement was made?

Mr. KEYS. Mr. Chairman, Mr. Pombo, if I could, let me take a minute and explain to you what we have considered waterspreading.

Mr. POMBO. I do not have very many minutes, so——

Mr. KEYS. Got you. When you consider waterspreading, basically we are saying that delivery of water outside of the authorized project boundary was waterspreading. In a negotiated settlement with the districts, with the tribes, with Water Watch and other—the state of Oregon and so forth, in 1991, we agreed that we could do boundary expansions and the goal was not to take lands out of irrigation. But we would try to deal with the impacts of waterspreading with NEPA, National Environmental Policy Act principles—in other words, mitigation. When you look at waterspreading, basically the loss to the streams is that portion of the return flow that would have gotten back to the stream from the original irrigation. And when you waterspread, that is the effect on the steams, water not getting back there.

Mr. POMBO. So this 20 percent was based on your losing part of the return flows?

Mr. KEYS. Yes, sir.

Mr. POMBO. Was it 20 percent?

Mr. KEYS. I do not remember the exact figure.

Mr. POMBO. Was this based on scientific data or was it just a number that was pulled out because it fit easily in the mitigation plan?

Mr. KEYS. Mr. Chairman, Mr. Pombo, I do not think it was a number pulled out of the air. People could question the science behind it, but it was not just a fictitious number.

Mr. POMBO. OK. Again, Mr. Reuter, the Bureau sent a letter stating—Westland made deliveries outside of the area in waterspreading. The Bureau sent a letter stating that this was illegal and the Bureau wanted the district to pay the Bureau $120,000 for those deliveries that were made in 1993 and 1994. And again, the same question, under what law was that requirement made?

Mr REUTER. We received a letter, and that is correct, and I do not know under what law or under what basis. It was not addressed in our contract and I do not know under what law they established this kind of a figure.

Mr. POMBO. Now just so I understand this, you did not use any more water than was contracted for.

Mr REUTER. That is correct. In fact, it was less water than what we have contracted for.

Mr. POMBO. If you had used a less efficient means of irrigating the land, used some type of flood irrigation or a less efficient means and used up all of the water within the original district boundaries, do you believe that this demand for $120,000 would have been made?

Mr REUTER. No, because the $120,000 was for those deliveries that were made outside of the Bureau recognized boundaries.

Mr. POMBO. Mr. Keys, I know I am out of time, but I will give you a minute to respond to that.

Mr. KEYS. Mr. Chairman, Mr. Pombo, the bill that you are discussing was one that was made in error. We had talked to the districts about——

[Laughter.]

Mr. KEYS. In more ways than one, I would imagine. We had talked to the district about where they were delivering their water and what water they were delivering, was it natural flow, was it

storage water from McKay and so forth. After that bill was issued, we then got their records and it was corrected. Basically, the bill was based on that amount of charge that would have been charged if all of it had been project water. So there was some basis for it, we did find out that it was in error and that was corrected.

Mr. POMBO. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you. Mr. Cremeans is recognized.

Mr. CREMEANS. Mr. Armstrong, I would like to reflect a minute on the estimate of the loss to the economy of half a billion dollars, as it relates to this project. I think someone did mention that figure earlier and that 17,000 out of 49,000 acres would be identified. Of that half a billion dollars, how much of that—what percentage of the overall economy would you guess that to be? I am from Ohio, with an average annual rainfall of 40 to 46 inches and I am told that California has about 18 and I think you are probably half that or less. But what I am trying to find for myself is, it apparently is the major industry in your area.

Mr. ARMSTRONG. It is at the core of our community.

Mr. CREMEANS. Would it be 50, 75, 80, 90 percent of your economy?

Mr. ARMSTRONG. Roughly 20 percent. I think to put some of this in perspective for you, as we saw on our tour today, if you turn your back on the land that is irrigated and you look out over the horizon, there is not much to see. You are going to see sagebrush and you are going to see sand and you can look at the development and the economy that existed here pre-irrigated agriculture and you will see that it was used for the storage or nerve gas. And the reason for that is because this was considered to be an area of little value. And that value has been enhanced through our irrigated agriculture and now we have an area that has a very significant value, not only to this community but to this state and to our country.

Mr. CREMEANS. Now what I am asking you is that only the irrigated property, the grounds rather, contribute to 20 percent of your economy, is that correct?

Mr. ARMSTRONG. I am really guessing for you at that point, I do not have a basis to give you an exact figure.

Mr. CREMEANS. In other words, in my district, we have Ford Motor Company, we have chemical plants, we have coal mining, we have a timber industry, and my question, so I can try to make some comparisons is, that only those properties or that agricultural economy that is directly affected by irrigation would contribute half a billion or consume 20 percent of the gross local economy.

Mr. ARMSTRONG. That acreage would contribute to 90 percent of the gross local economy.

Mr. CREMEANS. That is what I am trying to determine.

Mr. ARMSTRONG. Yes.

Mr. CREMEANS. That is what I was fishing for.

Mr. ARMSTRONG. The loss of it would be—of the acreage that is out of boundary, would be a 20 percent hole in that piece, but irrigated agriculture is our economy and those industries and support services and the services that support that are who we are.

Mr. CREMEANS. OK. Mr. Myrum, in your opinion, if the Bureau was successful in removing water from lands currently outside dis-

trict boundaries, how would Oregon state law deal with that? In other words, how would that water be used under current Oregon state law?

Mr. MYRUM. The issue of use of Federal water is an issue of whether or not the contract with the Bureau of Reclamation allows delivery to those specific lands. Traditionally, the Bureau of Reclamation wanted a requirement that any lands which got Federal water were irrigable and were also able to carry the burden of paying off the debt to the Federal Government. Under Oregon state law then, they could issue a water right for the use of Federal water, this being a supplemental water right, but whether or not the district had a contract to deliver water to that land is between the district and the Bureau of Reclamation. So from the state perspective, they would require that there be a supplemental water right.

Mr. CREMEANS. Mr. Keys, do you have any idea how much the Bureau of Reclamation is spending for say the salmon recovery efforts? Do you have any idea?

Mr. KEYS. Mr. Chairman, Mr. Cremeans, if you look at the Federal Government as a whole, we are spending somewhere around a billion dollars a year.

Mr. CREMEANS. Twice the economy of——

Mr. KEYS. If you make that comparison, that is true.

Mr. CREMEANS. Is any of that reimbursable?

Mr. KEYS. Mr. Chairman, Mr. Cremeans, there is a portion of it that is, but it is very small.

Mr. CREMEANS. Mr. Johnson, in your testimony, you mentioned something about water conservation and increased efficiency efforts. Can you tell us any more about how the area irrigators are trying to make efficiency more of an individual or a group effort? Could you comment on that?

Mr. JOHNSON. Well, of course, you realize some of these districts and some of these irrigation lands have been getting wet with this water for 90 years, and all that was originally flood irrigated application, and gravity played a big role. As technology and efficiency allowed, people have brought more efficiency to bear and that has done a number of things, including make some otherwise unirrigable land irrigable. You can pump it up hill now and get it where it will do some good. So with that in mind, original project boundaries in my district was over 16,000 acres in the original enabling legislation. But we are only irrigating about 9000 acres, somewhere between nine and 11. The actual figure is somewhat in dispute at this point.

So to answer your question, the efficiencies gained have been basically efficiencies borne by the landowner desiring to make better use of lands, and the net effect is better use of the resource through sprinklers, through drip irrigation, through improved economy of both application and distribution.

Mr. CREMEANS. Mr. Reuter, is that correct? Reuter, I am sorry. What other parties were actually involved in the original negotiations that actually led to the passage of the Umatilla Basin Project Act? Who were the principals, let me ask you that.

Mr REUTER. The irrigation districts and the tribes were the two main principals. The business people in town were also very active

in supporting the Umatilla Basin Project Act, and this is why it was so successful in getting passed, because it had the whole community, both the business community and the agricultural community and the tribes' interest and of course the county government and the state government, and of course the Federal Government.

Mr. CREMEANS. Mr. Chairman, that is all of my questions.

Mr. DOOLITTLE. OK, thank you. Ms. Chenoweth is recognized.

Ms. CHENOWETH. Thank you, Mr. Chairman.

Mr. Keys, you mentioned in your testimony that Section 8 of the 1902 Act provides for the development and operation of the reclamation projects and will be undertaken in compliance with state water law. Have you in every case complied with state water law?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, in every case that I am familiar with in this region, we have done so.

Ms. CHENOWETH. Under Oregon state water law, is use of water in an instream flow for the purpose of flow augmentation, is that a beneficial use under Oregon law?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, in my understanding, it is.

Ms. CHENOWETH. Could you get a written opinion for me on that?

Mr. KEYS. Yes, ma'am, I would provide that for you.

Ms. CHENOWETH. Let me restate exactly what I want. I would like a written opinion from the Bureau of Reclamation on the interpretation of Oregon water law that flow augmentation for salmon smelt is a beneficial use under Oregon law.

You also indicated in your testimony Reclamation has acquired appropriative state water rights for operation of its projects. How did you acquire those rights?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, we applied to the state Water Resources Department, the state engineer, for those water rights, we paid the necessarily filing fees and have obtained them through the normal process that any other individual would obtain a water right.

Ms. CHENOWETH. How much was the total cost, do you remember? And when did you acquire those rights?

Mr. KEYS. This is just for the Umatilla Basin Project?

Ms. CHENOWETH. Yes.

Mr. KEYS. We applied for that water right in 1991 and if I am not mistaken, the price for that was somewhere around $8000.

Ms. CHENOWETH. Eight thousand dollars. What kind of volume of water are we dealing with here in the Umatilla Project?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, I would like to submit those figures for the record, because you are asking an old man with a very poor memory some very detailed questions. We did apply for the water right, we did pay for it and I can give you the exact amount that we paid for that. The purpose of the water right was the exchange of Columbia River water—in other words, we applied for a Columbia River water right to exchange for Umatilla River water, and there were a number of water right filings necessary to do that. The Columbia River water, the Umatilla River water, the water right that covered McKay Reservoir, the exchanges with the districts, there were a number of them involved and that is why it was so expensive.

Ms. CHENOWETH. Eight thousand dollars?

Mr. KEYS. That is to the best of my memory. I would certainly give you a figure to back that up.

Ms. CHENOWETH. What is the volume of water right out here in the Columbia River? I mean, do you pay for the water per cubic foot or acre foot of water?

Mr. KEYS. The filing that we made was an exchange right and it covered about 39,000 acre feet.

Ms. CHENOWETH. So it is not the acquisition of a water right for a beneficial use then? It is an exchange right, right?

Mr. KEYS. Well, it has to be beneficial or we do not get a water right.

Ms. CHENOWETH. No, no, no, I am talking about Oregon law which has beneficial uses in its law.

Mr. KEYS. Yes, ma'am.

Ms. CHENOWETH. OK. Now when you acquired these water rights, was it for a beneficial use, because you are using the whole river, or almost all of the river, and so $8000 just does not add up to me.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, what we had to do is pump Columbia River water out of the Columbia River to put into the irrigation districts in the Umatilla Basin. And it required a water right of us to do that. Then we had to do an exchange for that Columbia River water for McKay water and for natural flows of the irrigation districts that they were using out of the Umatilla River. And that is what that filing covered.

Ms. CHENOWETH. I see, OK. What was the volume of water?

Mr. KEYS. The volume on an average basis that we were taking out of the Columbia River was approximately 39,000 acre feet per year.

Ms. CHENOWETH. Gosh, water is cheap here in Oregon. According to those figures, it is awful cheap.

You talked about Reclamation's water rights includes storage rights. Now under Section 8, is that what empowered the Department of Reclamation to get storage rights?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, Section 8 says that when we build a project, we will apply for the necessary water right to cover that project and then we will operate the project within that water right that the state gives us. We did that when we constructed McKay Reservoir for the supplemental water supply in the Umatilla Basin.

Ms. CHENOWETH. OK. So Section 8 requires that you get water rights as opposed to storage rights?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, Section 8 covers water rights. A storage right is a kind of water right that you apply for when you are dealing with storage.

Ms. CHENOWETH. Water rights is a property right, is it not, appurtenant to the use?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, water rights are a property right.

Ms. CHENOWETH. OK. Storage rights are not a property right, are they, they are a contractual right, are they not?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, storage rights are water rights also, and therefore, they are property rights.

Ms. CHENOWETH. Can you show me in Oregon law or Idaho law or Federal law where storage rights are water rights?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, I do not have the right books with me, but we could certainly provide that for the panel.

Ms. CHENOWETH. I have not found it, and I do not know of any lawyers who have found the answer to the question that I am asking, that storage rights are the same as water rights.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, the basis of Reclamation facilities is storage rights.

Ms. CHENOWETH. That is right.

Mr. KEYS. And we deal with them almost exclusively in meeting the contracts that are written for those project waters. And certainly, I would provide for you the basis of our use of storage rights.

Ms. CHENOWETH. That is good, and I think we are coming pretty close, because as I said earlier, I believe storage rights are a contract right.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, I understand what you are saying, but I do not agree that a storage right is simply a contract right because we have water rights that cover storage rights, storage rights for our projects all over the west.

Ms. CHENOWETH. You and I may never agree, but I think if we could find the law that says that storage rights and water rights are the same, then we may come to an agreement.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, I will certainly give it a good try.

Ms. CHENOWETH. That is good, I think that is a great challenge for you, Mr. Keys, we have a good history, do we not?

[Laughter.]

Ms. CHENOWETH. You are a gentleman, you are not answering in public.

You do state that Reclamation must also comply with general statutes like NEPA. Mr. Myrum indicated that you are requiring a NEPA study per district, I think it is—yeah, he said that these contracts have called for the districts to provide a portion of their water for instream use and have required NEPA compliance for districts, and this is on waterspreading.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, that is correct.

Ms. CHENOWETH. Waterspreading, as enacted by the Bureau of Reclamation, is really a major Federal action, is it not? I mean it is a change in policy, is it not?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, I am not sure what you mean by that, but waterspreading has been around for a long time.

Ms. CHENOWETH. Yes, but as that policy is now being carried out, as referred to in this body of testimony, it is a major change or a major Federal action, is it not?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, yes, it is a major Federal action.

Ms. CHENOWETH. Well, under the National Environmental Policy Act, for every major Federal action, is the agency not required to do their own EIS, environmental impact statement, economic impact statement? So why are you having the districts pay to do it,

because the Supreme Court has said time and time again that the Congress purpose that the agencies determine what their actions will be on the environment, and then the court has said on the economy. Has Bureau of Reclamation done an EIS?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, I think if you look at different government agencies, you will find different policies on payment for environmental impact statements. One of the principles that we have dealt with for a number of years around Interior and Reclamation is that those people that benefit from an action help pay for those NEPA compliance actions. This is not the first case that we have been involved in where those people that are bringing actions are helping pay for environmental impact statements.

Ms. CHENOWETH. I just have one final question, and that is, but does the law, the Congress when they set forth the National Environmental Policy Act state that for every major Federal decision, it is up to the agency to comply and perform the environmental and economic impact statements? I am talking about the law and United States Supreme Court decisions backing up that law, as opposed to policy.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, I think if you look at the law, it says that the impact statements will be done. The interpretation from Interior is that those people benefiting would help pay. And I work for Interior.

Ms. CHENOWETH. I would love to help you make your job easier and we would not have to deal with all those interpretations which run counter to the law. Believe it or not, I really would.

Thank you, Mr. Chairman.

[Applause.]

Mr. DOOLITTLE. Mr. Keys, how long have you been the Regional Director here?

Mr. KEYS. Mr. Chairman, since September 16, 1986.

Mr. DOOLITTLE. So you have been here for quite awhile to oversee these issues and form an opinion as to how things are going? You testified that the Federal Government, through the various agencies involved, is spending about a billion dollars a year on salmon recovery efforts?

Mr. KEYS. Mr. Chairman; yes, sir, I think if you look at the individual years, it will range from half a billion to a billion dollars and that includes foregone power, it includes the investments from private organizations, from states, from all of the Federal agencies, from the ratepayers. All of those above, are probably in that range.

Mr. DOOLITTLE. I understand now, that Bonneville alone has apparently, on a cumulative basis, contributed two billion, as Mr. Cooley has indicated. But this is a billion a year, you are saying, from the various sources.

Mr. KEYS. Well it ranges somewhere between a half and a billion.

Mr. DOOLITTLE. Right, sure.

Mr. Keys, do you know how many salmon have been recovered per year roughly as a result of that expenditure?

Mr. KEYS. Mr. Chairman, I do not know the exact figure. I know that in the period that we have been working with them, it has gone up and down. I know that this year, there are no sockeye

salmon that returned to Redfish Lake in Idaho. I know that the counts into the Umatilla River Basin are up into the thousands where they used to be nil.

Mr. DOOLITTLE. Let me just jump in and observe that in the Umatilla Project they did not have the fish ladders originally, but they changed the projects to incorporate those, is that right?

Mr. KEYS. Mr. Chairman——

Mr. DOOLITTLE. Or they barged around or they did something to allow the fish to move, right?

Mr. KEYS. Well, the fish returning to the Umatilla at one time could not get up the river. They got to Three Mile Diversion Dam and could not get past. The return of the fish is a combination of water in the river, putting ladders and screens around the diversion dams, actually improving the channel in some places. The Confederated Tribes of the Umatilla Indians Reservation have had actions with their hatcheries, with transportation, all of those actions have resulted in a tremendous return into the Umatilla River Basin.

Mr. DOOLITTLE. Well, if we talk about the mainstem, according to the biological opinion, the return of Snake River sockeye salmon to Red Fish Lake is determined by trapping at Red Fish Lake creek in spawning ground surveys. You are familiar with this survey?

Mr. KEYS. Yes, sir.

Mr. DOOLITTLE. It shows that in 1985 they observed 12 adults, it looks like the high point was in 1986 at 29 and then since 1987 it has been four in 1988, one in 1989, zero in 1990, four in 1991, one in 1992, eight in 1993, one in 1994. Is this what we are spending our billion dollars a year for?

Mr. KEYS. Mr. Chairman, the Snake River sockeye is only one of the species that were listed. The Chinook, the Coho and so forth are also part of that. I have not seen figures that show how much per fish that we are spending.

Mr. DOOLITTLE. Mr. Keys, let me just ask you. You may not be able to answer this as a regional director, but just as a citizen, a person who has been involved in water issues for a life's career with the Bureau, are you satisfied with how this situation is resolving itself?

Mr. KEYS. Mr. Chairman, as I said when we started, my job as a Federal person is to uphold the law of the land. The Endangered Species Act is part of that law of the land. We work with the other Federal agencies, we do not employ scientists to tell us how many fish are necessary to justify the thing. We work with the National Marine Fisheries Service as our scientists to tell us how to make our projects compatible with the operation of the river so that the fish can come back, and that is what we are trying to do.

Mr. DOOLITTLE. My job is to help make the law of the land. Since you are responsible for upholding the law of the land, with your experience, what suggestion would you make to get some reasonable return for our money, and to allow people to do what is supposed to be done in this region; namely, develop the agriculture and sustain it? What needs to be done? The law of the land, if this is the law of the land, is obviously unreasonable. What needs to be done?

Mr. KEYS. Mr. Chairman, I cannot tell you whether the law of the land is reasonable or not.

Mr. DOOLITTLE. That was my assessment, and my assessment is that it is not.

Mr. KEYS. I understand. If I had—if I were king for a day?

Mr. DOOLITTLE. Yes, give me that.

Mr. KEYS. I would say that the solution to the salmon thing has about half a dozen different vital components. The first one is fix the dams. If you take the Corps of Engineers facilities on the mainstem and on the lower Snake River and make them compatible with the passage of fish up and downstream; if you take from the state of Idaho a reasonable amount of water to help move those fish through those facilities; if you take from the state of Montana and the operating facilities on the Columbia River adequate water to move those fish down the river; if you implement a reasonable hatchery policy that does not saturate with weaker fish; if you consider the harvest limits that would be reasonable to allow people to make a living on the ocean as the people make a living from the agriculture in this part of the basin; you put all those together I think we can address it under the law that we have now.

[Applause.]

Mr. DOOLITTLE. Well, I guess my time is up, but you know, it is unfortunate—this has gone on for years without resolution, why has it not happened?

Mr. KEYS. Mr. Chairman, I cannot answer that. I would tell you that the Bureau of Reclamation is doing its part in this thing to do three things. One is to help return the fish. The second is to meet its contracts with all of those people that have contracted with us for water delivery. And the third is to meet the other laws that we are involved with.

Mr. DOOLITTLE. Ms. Chenoweth is asking unanimous consent to have a couple of minutes to ask a question. Any objection?

[No response.]

Mr. DOOLITTLE. All right, go ahead.

Ms. CHENOWETH. Mr. Chairman, Mr. Keys, you mentioned a series of situations that could possibly help and that you would recommend. One was the 427,000 acre feet flow augmentation from my state. For the record, are you looking at this 427,000 acre feet as an ongoing issuance of water from Idaho?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, yes, the 427,000 acre foot figure is one that we have looked at that we think we can sustain over a long period of time without affecting the ability to deliver the water to those contracts that we have, and yet it is enough to move through at the right time, whether you have a drawdown situation or an augmentation situation, at the right time, it can be part of that solution.

Mr. DOOLITTLE. Mr. Cooley.

Mr. COOLEY. Mr. Keys, before going to Congress, I served in the Oregon State Senate and I was on the Columbia Gorge Task Force for a couple of years, you probably know that. And you know, we spent two billion dollars right out of Bonneville and additional other funds, as you say now anywhere between half a billion and a billion dollars per year. We have been doing it for seven years, this is a seven year project. In seven years, we really truly have not mitigated anything.

Now the thing is that we are now being asked to put a fish cap on and we are talking about another half a billion dollars per year plus all the others that are going through the process. How do we have any assurances that all of this money is going to be spent over the next seven years, which will cause rate increases to the utility users in the northwest, it will cause some problems with irrigation, I do not care how you cut it, one way or the other. And another thing is that we are hearing from the scientific community, not from the Federal agencies but the scientific community, that drawdowns are not going to accomplish anything. So how can the agency keep pushing the issues of drawdowns when it has not basically worked and all the other things going on have not really truly worked. Barging seems to be the only thing that has had any kind of scientific result coming through. When you get criticized by your own people or even the agency heads—we had a meeting with Secretary Babbitt here not too long ago and he said that the American public should request some kind of return for their investment. And we were specifically talking about the Columbia River and the money we have spent. How do you answer these questions as a member of the agency and head of this area?

Mr. KEYS. Mr. Chairman, Mr. Cooley, I have to answer that in two ways. First, it is the process that is there. In the biological opinion that we are operating under now and from 1995 to 1998 will be operating under, there are provisions in there for annual review of what we are doing, what good it is doing, how it should be changed during that period and what we ought to try to do after it is over. That is the first thing. In other words, annual review of what is coming out from the investment that we are putting in.

The second is I think you have built me up to be a lot larger than I am. Reclamation is one of the small players in this game, and certainly to make the call on drawdown, if I had my way about it, we would have probably tested it several years ago to see whether it would work or not. We did a test on one reservoir, and all it did is bring up a lot of other questions. We do not know whether drawdown will work or not. There are some scientists that say yes and some that say no. I do not know myself. I do not think a full drawdown of the system is in the cards these days. There are some partial drawdowns being considered; John Day reservoir down to minimum irrigation pool or spillway pool or some level in between, drawing the lower Snake River pools down to some level, not all the way to spillway. There are some proposals in there and I do not think anybody is pushing for a full drawdown of the system these days.

Mr. DOOLITTLE. All our time is up. Mr. Keys, I just cannot resist asking another question. Do we have figures for these other runs of salmon, species of salmon?

Mr. KEYS. Mr. Chairman, yes, there are figures available for the Chinook runs that are part of the Endangered Species Act.

Mr. DOOLITTLE. Could you provide those to the Committee as well?

Mr. KEYS. Mr. Chairman, I will either provide them directly or have the National Marine Fisheries Service provide them, whichever you would prefer.

Mr. DOOLITTLE. Well, either one is certainly fine with me.

Mr. KEYS. We will provide them from our agency then.

Mr. DOOLITTLE. All right. Thank you. With that, I would like to thank the members of the panel for their testimony. We will ask you to respond to any additional questions that the members may have, which would be forwarded to you, and then to respond on a timely basis in writing. We will hold the record open for that to occur. Mr. Keys, you are going to be available with the third panel to come back and answer questions?

Mr. KEYS. Yes, sir, we are here to the bitter end.

Mr. DOOLITTLE. All right, the panel is excused. Thank you. We will call up panel number two.

On panel number two, we have Don Sampson, Steve Sanders, Steve Eldrige, Joyce Hart and Reed Benson.

We will begin with Mr. Sampson, who is Chairman of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation. Mr. Sampson.

STATEMENT OF DONALD SAMPSON, CHAIRMAN, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Mr. SAMPSON. Thank you. That is Umatilla water we are drinking here.

Mr. DOOLITTLE. It tastes like good water.

Mr. SAMPSON. Good afternoon, I am Donald Sampson, and I am Chairman of the Board of Trustees for the Confederated Tribes of the Umatilla Indian Reservation. Here with me today to help answer any questions is Antone Minthorn, who is Chairman of the Tribes' General Council.

The Tribes oppose H.R. 2392 because it will not resolve the waterspreading problem in the Umatilla Basin, and in fact, will make it worse. The Tribes support drawdowns as necessary for restoring salmon to the Columbia-Snake Basin.

With regard to waterspreading and H.R. 2392, H.R. 2392 is unnecessary. We already have a solution to the waterspreading problem for the Umatilla Basin. This solution was developed cooperatively and agreed upon by all of the parties in 1992. In this basin, we resolve our conflicts through cooperation.

Our cooperative solution simply requires that irrigators involved in waterspreading go through the normal process for obtaining Federal water. Most irrigators in the Umatilla Basin either have developed their own irrigation systems or have gone through the proper process to get Federal water. H.R. 2392 would give special rights to those few irrigators here who did not follow the rules.

H.R. 2392 undermines our cooperative solution. It would literally demolish the cooperative agreements that the people of the Umatilla Basin worked so hard to create. The existing solution ensures that the impacts of waterspreading on our Treaty resources will be mitigated. In contrast, H.R. 2392 ignores the impacts to salmon, a resource now enjoyed by hundreds of our neighbors and, of course, one of our Treaty resources.

This legislation would have significant impacts on the people of the Umatilla Basin. It is a shame that politicians in Washington, D.C. are considering such legislation without first taking the time to understand what the local situation is.

Representative Cooley, we believe there are several things you should have done before developing this legislation, much less introducing it. First, you should at least take the time to tour the Umatilla Basin, to get to know the people, to see what great successes we have accomplished here, and to see what the remaining problems really are.

Second, you should have met with the Tribes to discuss this issue and learn our perspective. As a Federal Representative, you have a legal fiduciary trust responsibility to protect our treaty resources. The first time we even heard about this legislation, however, was last week when the press called us to ask us how we felt about it. Despite repeated requests, your office still has not provided us with a copy of your bill, and we had to get it from a Representative from another state.

Third, since your bill would amend the Umatilla Basin Project Act, you should have consulted with Senator Mark Hatfield. The Umatilla Basin Project is a model solution to the conflict between our reserved water rights and legal irrigation water use. Senator Hatfield is the father of the Umatilla Basin Project. He has fought hard for the people of the Umatilla Basin to see that this cooperative solution is a success.

Waterspreading and the Umatilla Basin Project are two separate issues. The Umatilla Basin Project was adopted by Congress after literally years of negotiations between all involved parties in the Umatilla Basin. Your bill would undermine the credibility of the Umatilla Basin Project by attaching a controversial and unbalanced legalization of waterspreading, without any community involvement, let alone consensus.

If H.R. 2392 is passed, it will not resolve waterspreading, it will rip the lid off the controversy which we have already dealt with. Because it ignores the impacts to the fishery and to the instream flows, it likely will result in litigation.

This bill is a classic example of the Federal Government taking an action which will adversely affect Oregonians' water rights. We have been working together cooperatively in the Umatilla Basin for nearly two decades to solve our problems. We cannot afford to have the Federal Government come and unilaterally undermine our cooperative solutions.

In the area of drawdowns, salmon define the Pacific northwest, yet they are nearly extinct. Discussions of salmon recovery in the Columbia and Snake Rivers must recognize this fact. The primary reason for this crisis is the mainstem hydroelectric dams.

There are three principal plans for how to operate the mainstem hydroelectric dams to recover salmon runs—the Treaty Tribes' Spirit of the Salmon Plan; the Northwest Power Planning Council's Strategy for Salmon and the National Marine Fisheries Service's Endangered Species Act Recovery Plan. All three plans call for the drawdowns of the four lower Snake River dams and of John Day dam.

The reason for this consistency is simple—for salmon to recover, salmon habitat must be recovered. The mainstem has been converted from a clean, free-flowing river into a series of stagnant reservoirs, interrupted by eight fish-eating dams, which kill salmon by the millions. The dams and the reservoirs must be fixed to restore

salmon. It is that simple. Most important, the people of this region support drawing down reservoirs to save salmon.

Drawdowns would be good for irrigation. We have the technology to modify pumps and intakes so as to not impact irrigation. With drawdowns, we can maintain existing irrigation. Without drawdowns, more water will be needed to reallocate from irrigation use to instream flows. Drawdowns, however, would mean less water would be needed from the irrigation storage reservoirs.

Irrigators and all Oregonians should be concerned about Idaho's Snake River Basin Adjudication. Idaho is dividing up the headwaters of the Columbia River, while explicitly disregarding the water needs of Oregon and Washington. This poses a threat to all Oregonians, irrigators and fish interests alike. It is high time that irrigators, Indians and the Governor begin to take steps to protect our water from over-allocation by upstream states like Idaho.

In conclusion, we oppose H.R. 2392 and support drawdowns. If you want more information on these issues, we will be glad to give you copies of this Tribe's Waterspreading Policy and our Columbia Basin Salmon Policy. Finally, I would like to invite you, Congressman Cooley, to come out to the reservation to meet with us and to discuss these and other important issues. We have a long history of success through cooperation and you are welcome to work on a government-to-government basis with us.

Thank you very much.

Mr. DOOLITTLE. Thank you, sir. Mr. Steve Sanders is recognized. Mr. Sanders is the Oregon Assistant Attorney General with the state Department of Justice. Mr. Sanders.

STATEMENT OF STEPHEN E.A. SANDERS, OREGON ASSISTANT ATTORNEY GENERAL, OREGON DEPARTMENT OF JUSTICE

Mr. SANDERS. Thank you, Mr. Chair.

I view my role here primarily as a technical advice one, I do not come with any particular ax to grind. I will certainly be willing to answer whatever technical questions you may have with respect to Oregon water law.

I do have a couple of points though, and at the risk of perhaps repeating what members of the Committee already understand, and certainly Congressman Cooley, to explain what a water right is.

A water right is merely the right to shut off the junior user in times of shortage. What that means is that a water right does not stand alone, it stands in line with all other water rights on the same source. Consequently, there must be one system under which all water rights have got to play. Everyone has got to play in the same game if everyone is going to be regulated in conjunction with each other. There is only one system in the western states by which this conjunctive regulation can occur. That is the state system.

Obviously we are happy to hear the committees' view that the state systems should be the mechanism by which water rights are quantified and managed. In the state of Oregon, we have been managing our water rights since before the century began. We began in 1909 with a new system which now requires all persons who wish to receive a water right to make an application to the

state. We issue a permit which can then mature or vest into a certificate. These water rights then are regulated on the basis of priority date against each other. Before 1909—and in other western states it varies as late as about 1971 in Montana, all a person needed to do to acquire a water right was to put the water to use. The problem with that was there was no public record of when use began, and consequently no public way to determine what date a particular right would have when it is stacked up against other claimants on a stream. The result is that each state has recognized the necessity to do water right adjudications, complicated procedures by which the relative rights that were established prior to a permit application system, could be evaluated against each other and then folded in or integrated into the same system of priority dates that more recent water rights receive.

In Oregon, we have adjudicated about three-quarters of the state, but unfortunately, except for two adjudications, here in the Umatilla Basin and in the Lost River Basin, the United States has refused to participate. Consequently we have been unable to fit in the Federal reserved and other Federal water rights into the state hierarchy of water rights, and consequently, we do not know how much water, if any, is left for appropriation by others, nor can we regulate in favor of these senior Federal and tribal reserved rights.

For example, we are now beginning in the Klamath Basin—actually we began in 1975—an effort to adjudicate Federal and tribal reserve rights. We have now pending before the United States Supreme Court an opinion from the Ninth Circuit which held that the state of Oregon had jurisdiction. The Klamath Tribe has petitioned for review. We are pleased to see that the United States now agrees that the court should not review the case and instead Federal agencies should participate in the state adjudication. We look forward to doing that with some trepidation, I might add. These are very expensive procedures for us to manage. Like many other states, we are subject to budget shortfall, budget cutbacks, and it is no great honor to be standing in the middle of a water fight, I can tell you.

However, we are willing to take this on here, and in other areas of the state as well. We would ask for one thing as a matter of fairness: that the United States pay its share of the filing fees. And Congresswoman Chenoweth, you mentioned about the cost or the expenses, you obviously recognize how expensive these procedures are. Because of a recent Supreme Court case out of Idaho that I am sure you are aware of, the United States need not now pay filing fees in adjudications. This is to distinguish, as Mr. Keys correctly pointed out, they do pay fees for water rights acquired under the permit application certificate process, but for adjudications, which are frankly more complicated procedures, they do not pay. And we would ask that Congress would rectify what we believe to be an unfairness. Persons claiming a lion's share of the water ought to pay a lion's share of the costs of adjudicating that right.

I would make one point, perhaps in defense of Mr. Keys. Our recent relationship with the Bureau of Reclamation has certainly been improving. We have made diligent efforts to work with the Bureau to ensure that the contractual arrangements and the water rights that the Bureau holds are held and exercised in compliance

with state law. Certainly we have a long ways to go on that, certainly the state of Oregon has made a change, a general change in policy, I would say over the last ten years or so, requiring stricter and more technical compliance with the law than we historically did. We now read the law very technically in an effort to balance all of the various interests that are competing for too little water.

With that, I think I will wrap up and standby for questions.

[The statement of Mr. Sanders may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Steve Eldrige is recognized. Mr. Eldrige is Manager of Umatilla Electric. Mr. Eldrige.

STATEMENT OF STEVE ELDRIGE, MANAGER, UMATILLA ELECTRIC

Mr. ELDRIGE. Thank you and welcome to eastern Oregon, especially the two folks from the northwest, and Representative Cooley. Does not Peter DeFazio serve on this Committee? You know, in Oregon, the Cascade Mountains kind of divide our state and if you are west of the Cascades where most of the urban areas are, where Peter is from, sometimes you forget that there is an east of the Cascades, so maybe that is why he is not here today.

When you look at me, I hope you will not see just a utility. We are an electric cooperative, we are owned and operated by everyone that we sell electricity to. So we are truly the community utility, and we strive to represent all of the people that we serve, and some of those people include the Confederated Tribes of the Umatilla, outside of where their offices and what-not are. And we do not serve the casino either.

We have a real Endangered Species Act problem, I think. And I think that it is being exploited by those who view the world that natural resources should not be or cannot be used to make an income. And I think one example of that is aspects of the Umatilla Basin plan. We started out with really a historic coming together of the parties, and I think we should view that with a lot of pride. Then we had activist groups come in that did not figure we could do it right and we had an activist commissioner of the Bureau of Reclamation that was also going to show us the right way to go. And it has been broken since then, and I am not sure if it will ultimately be fixed or not. I certainly hope it will be.

Now on the Columbia and Snake Rivers, we have another rogue Federal agency in the form of the National Marine Fisheries Service, and NMFS is in charge of recovery of the Snake River salmon, and while they do not dictate terms on uses of water, they influence what the states do and at the present time, there is a moratorium on any further withdrawals from the Columbia River, and they have effectively stopped the issuance of any new permits. And by the way, in Oregon, the moratorium only applies east of the Cascades. Now this is in view of the fact that only three to four percent of the annual flow of the Columbia River is withdrawn, and the annual flow is 93 million acre feet. And in this little part of Oregon, we use less than seven-tenths of a percent of what is in the Columbia River, and we irrigate over 100,000 acres with that. We do not think that the Columbia River is over-appropriated, and further, we think that as new research comes in and more scientists view the data from all groups, they do not believe that the

sole problem with salmon is the mainstem dams. It is a contributor and we are working on it, but there is a phrase that I first heard from the tribal folks, and that is gravel-to-gravel mitigation. And that is true, there is a connectivity between where the salmon spawn, how they get to the rivers and streams and how they get to the mainstem and how they get to the ocean, and it is that connectivity that we have to fix in total.

We will never have the historic runs back unless we move everybody out of the northwest. But I do think that we can have a commercial salmon run, and this community has stood solidly behind that, even when it has been advocated, and it is still being advocated, to drawdown the John Day pool, which you folks looked at today. It is about a mile wide, it looks like it is a mile deep, but it is not. In its deepest part below McNary, it is maybe 35 feet deep in the shipping channel. And we have said that if it could be shown that salmon recovery really could be positively impacted by drawing down the John Day pool, that we would support it, we would help it happen. We needed help mitigating for the irrigation impacts and others, but that we would not fight it. And as a result of that, we have even gone so far as to support the lowering of the John Day pool by five and a half feet from its normal operating level. And that was three or four years ago.

In that length of time, there has been no effort to determine if there was a positive impact on salmon for that five and a half foot lowering. Now it is being proposed that it be lowered another five and a half feet, with really no data to support it, as near as we can find out. And the models that are used by the folks that support it assume all positive impact. No matter what the fish runs into, that the result after the drawdown is an enhancement of survival. You know, I do not know of any system that I have ever seen that was all positive. There is always something. But even if you accept the fact that it is all positive or the assertion that it is all positive, it is predicted a one percent increase in Snake River salmon survival. You cannot measure a one percent increase.

Now another impact for us is that say the drawdown does go ahead, and I think that Mr. Sampson is right, if it is to minimum operating pool, it probably can be mitigated for. What cannot be mitigated for is the devastation of the wildlife area, the Umatilla wildlife area. The impacts on that fish and wildlife population, some of those animals will die out because there is no other place for them to go and that tremendous wetland of 8000 to 10,000 acres cannot be replaced, there is no physical way to replace it. Some say well, you know, these are just trash fish anyway, they were not here before the dams and so they do not count. Well, that is not the way we look at it.

NMFS right now is thinking about listing the Atlantic Coast salmon. We are looking with great interest to see if they use the same model for proposed recovery on the east coast as on the west coast. On the west coast, you have got Bonneville Power and Mr. Keys mentioned a billion dollars a year being spent on salmon by the Federal Government. I do not think that is right. I did not know, first of all, that it was a billion dollars a year. The money I know of is $450 million a year that Bonneville's ratepayers pay for salmon recovery. That is not out of the Federal Government's

pocket, that is out of our pocket. There is no Bonneville on the east coast. Is the Federal Government going to ante up half a billion dollars a year for salmon recovery on the east coast? This is the only area in the country that is paying its own way for an ESA listing. This is a Federal action, normally Federal funds are used—not in this case, we are paying for it ourselves.

What I would ask you to do, what we would ask you to do, is to bring some bookends to endangered species activities. Just the fact of Bonneville Power Administration talking about capping their expenditures for salmon has brought about conversations that we were unable to have with the people involved in recovering salmon. I do not know if it will become a reality or not, but just the idea that there might have to be some budget discipline and some cost-effectiveness and showing something for the money we are spending, all of a sudden NMFS could squeeze $150 million a year out of their budget, just from that threat. Well, that tells me there is a lot of things in there that nobody feels very comfortable with.

And I will end with this, and this is the other bookend, we have to know what winning is. This last summer, I had an opportunity to visit with Will Stelle, he is a pretty sharp fellow, and I asked him—we were talking about the proposed salmon recovery plan and I said well, Will, you know, when are the salmon recovered? And he said well technically when it is delisted. He said, I personally do not feel that that is enough, and I do not think the region feels like that is enough. And I guess I do not know if that is enough either. But I said well, you know, how will we know if we have ever got what we want here, and he said well I do not know, I do not think that is my job. And I said well, have you tried to get a consensus on this and he said no. And I said well, have you told anybody you do not know when you are going to be done and he says no, and I do not intend to either.

We cannot live this way. We have got the uncertainty now of whether or not Bonneville and the northwest ratepayers will be bankrupted. Some would advocate tearing the dams out. Well, there are about 8000 megawatts of average power on the Federal system. If you tear it out—and you could do that—the best resource to replace it with would be combustion turbines. It would cost billions to replace it, but it could be done. Canadians say they have got all the gas you will ever need. It would raise our rates by about 50 percent, it would add air pollution, millions of tons of air pollution equivalent to about three million new cars. That is from a national environmental group.

So I think that we have to know when success is reached, we have to rein in the Federal agencies. Right now there is a technical management team in operation on the river, NMFS sits on that. The Bureau and the Corps, they talk about what they need to do and they look over there at the NMFS guy and he either shakes his head or nods it and then that is what they do. This is not balanced. All the parties involved have to be at the table and be a part of the solution and you have to let us try to fix it ourselves. I really believe that ourselves, this community and the tribes can fix the Umatilla Basin the way it needs to be fixed and we do not need Federal agencies coming in and telling us what is good for us.

[The statement of Mr. Eldrige may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Our next witness is Joyce Hart with the Oregon Wheat League.

STATEMENT OF JOYCE HART, OREGON WHEAT LEAGUE

Ms. HART. Mr. Chairman and other members, thank you very much, welcome here. I think I left this with you, you might take it open a little bit later here.

To put the issue of restoring salmon into perspective as it looks to the Oregon and other northwest wheat growers, I need to have you look at how wheat is produced and marketed here in the northwest. After the summer harvest, wheat is either stored on farm or at the local county elevator. Wheat growers have the option of selling immediately or waiting for better prices. In the midwest, wheat producers have the option of hedging on some of the major exchanges. Here in the northwest, that option is not viable. The basis for soft white wheat is too much of a spread. Therefore, it is critical in this region for growers to have the opportunity to market wheat at any time year round.

The major type of wheat produced in the northwest is soft white, of which about 90 percent is exported annually through the lower Columbia River grain export terminals. Our major customers are in Asia and the middle east. Soft white wheat is used for a number of end products, including cakes, pastries, biscuits and flat breads.

If I were to take and make a cookie out of soft white, you would love it. If I were to take a cookie and make it out of the hard red that you will see here on our map, you can take a look at where it is being produced, I could take that cookie and kick it down and out the door and back up here again and we could play hockey. That is the difference when we talk about end products. And it is the real secret for what we in the northwest have when we think of different kinds of end use products. Our customers come to Portland district—I say district because I include Kalama, both sides of the river, Vancouver and Portland. They come for several different classes of wheat. Those wheats are loaded on one vessel. If we have grain arriving from the interior, it is red because that comes by unit train. It does not come on the barge, the barge for the most part, if you will look at the map where the blue dots are, they pick up the grain that is here in the northwest. It is way too expensive to bring it from here into Portland by rail. So what happens is that that is within about a 700-mile radius, where you see those little blue dots, comes by barge and it is much less expensive. If we try to compete with the long hauls that come, we get shot down and we cannot even get a bid at Biggs, which is where I am on the lower Columbia. If you will take a look at your map here, it has a list of all of the different dams.

So what I did is I looked to see if we had—we had to get all three classes on board that vessel, what will happen, if we have a drawdown below minimum operating pool, you are going to see soft white wheat sitting here and not going anywhere because of the cost. And what will happen is the red wheats, dark northern springs will be at Portland because they got there by rail. That vessel will be partially loaded and sitting at anchor waiting to be filled, at great expense. This expense makes us not competitive on

the international market. If those vessels do not sail, that is $10,000 a day they sit there and wait. So next time they are going to go somewhere else, to another nation.

Export terminals in the lower Columbia River system are essentially through-put operations, meaning that they do not and cannot store grain for long periods of time. Grain arrives daily either by rail, barge or truck and is binned according to quality and class. And again, we are looking at different protein levels. It is loaded on an export vessel almost immediately. The system is highly efficient, mostly automated and reliable. That is what our customers have come to expect.

I would like to take a moment to turn to wheat transportation, which is the main reason I wanted to speak to you today. Almost all of the soft wheat that is produced in the Pacific northwest is shipped by barge down Columbia River. The only real exception is that wheat produced in the Willamette Valley, and that wheat is trucked. Occasionally a unit rail train is loaded with soft white; however, that is generally not the preferred method of transportation due to cost competitiveness of barge transportation.

Let us focus a few minutes on some of the proposals that have come forth allegedly to assist us in the effort to protect and enhance salmon in the Columbia/Snake system. Lowering the John Day pool to spillway crest for four to five months, would mean a closure of barge transportation for six to seven months. Lowering that same pool for two months would mean a closure of the system for at least four months.

Supporters of these ideas would simply say that wheat could be trucked or railed while the river system is inoperative. What proponents fail to understand is that the rail system is already fully utilized with two unit trains coming down the river a day, both in sense of volumes of wheat and corn moving also through the Columbia Gorge as well as in the number of rail cars that are available to transport grain—we have a great car shortage at times. Others might suggest that wheat be trucked to Biggs, and if you will note on the map where Biggs is, that is near our home farm, which is below the John Day Dam. We put our barges there. Under the most conservative scenarios—and I really tried hard to figure this out—that would require the equivalent of—and you want to change what I have written in testimony at this point, because I really worked hard to get it down to the best scenario I could possibly understand—the equivalent of three barges to handle the volume on a daily basis—that is daily. That would mean 351 trucks coming from up in this vicinity and the rest of Oregon, or one unit train. Now there is not enough room for that other unit train on the rail by the way. This translates to an additional transportation cost of 30 to 40 cents a bushel, ten cents of that would be for handling, there might be an additional ten cents for handling if the grain was stored in an elevator on the river. That is a total of—now cross out what I have and put $105,000 per day—which must be borne by up-river producers. I have little faith that the public would greet with great enthusiasm the addition of thousands of additional trucks on I–84, even if they are available. I took that $105,000 and looked at it with what we had produced last year and this year and we are looking at anywhere from $19 million to $22

million in addition—not just what it costs now to transport grain—in addition, that growers are going to have to pick up. I do not think they are going to stay in business.

The cost to wheat producers for transportation would really be unfriendly and also the additional of thousands of trucks spewing pollution into our air.

In short, Mr. Chairman, members of the Subcommittee, there are no easy answers to salmon restoration. Most importantly, all parties to this debate must understand fully the implications of drawing down reservoirs and the effect that those proposals will have on the most efficient, high quality wheat and grain exporting system in the world, the lower Columbia River.

Wheat producers in Oregon and the northwest started working on the development of export markets in the 1950's and have not stopped since that time. We are looking, as an example, at the development of a new class of wheat, white, hard white, which will, we hope, gain back market share that we lost to Australians. This new wheat when released will add to our already impressive list of high quality wheat available for our customers and potential customers.

In conclusion, Mr. Chairman, my message today is that rational thought must prevail in this debate over the future of the Columbia/Snake system.

I appreciate the opportunity to appear and if there are any questions would be pleased to answer them.

[The statement of Ms. Hart may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, ma'am. Mr. Reed Benson is recognized. Mr. Benson represents WaterWatch of Oregon.

STATEMENT OF REED BENSON, WATERWATCH OF OREGON

Mr. BENSON. Thank you, Mr. Chairman and members of the Committee. WaterWatch very much appreciates the invitation to appear today to address some very important issues here in the Umatilla Basin. WaterWatch is a non-profit environmental group which works at the state and Federal levels to restore and protect instream flows throughout Oregon. We have been actively involved in Umatilla Basin water matters for about five years and we have submitted a written statement for the record.

As this Committee considers Oregon water rights, it should recognize that all the waters of this state are owned by the public. That is a fact that is often overlooked, but that is Oregon law. And because water is a public resource, people who own water rights also have water responsibilities. Water users must follow the state laws, Federal laws and Federal contracts under which they receive water. Waterspreading occurs when users exercise their water rights but do not meet their water responsibilities—that is, when they violate applicable laws and contracts.

Now we recognize that every case of waterspreading is unique. We know that a lot of violations are unintentional and even pretty understandable. On the other hand, they are also pretty common, and Reclamation and the states have done little west-wide to prevent them, discover them or correct them. Reclamation's inaction continues even as salmon, steelhead and other northwest fish slide toward extinction and regional salmon recovery authorities have

called for an end to waterspreading. Perhaps the clearest and most important call for action came in the NMFS proposed recovery plan for the endangered Snake River salmon, which directed Reclamation and the states to halt unauthorized water uses by April of 1996 and to make spread water available for instream uses.

Now I should emphasize here that the Bureau of Reclamation, despite the Federal law's general deference to state law in the area of water resources, has some very important Federal duties and authorities regarding the management of project facilities and project water. First of all, as has been recognized, the Bureau has a duty to uphold Federal laws, including the reclamation laws, its trust responsibility to Indian tribes and the environmental laws, including the Endangered Species Act.

Second, the Bureau has broad authority to write rules and to take actions necessary to implement the reclamation laws and that authority gives it considerable discretion over the operation of Federal projects, which the states cannot entirely interfere with.

Finally, once water users acquire rights by contract, those are vested rights and the Bureau must honor them, but at the same time, the Bureau does not need to deliver water in violation of those contracts. There is Ninth Circuit case law over the last 10 or 12 years that confirms all of those points.

Now despite these duties and these authorities, despite the salmon plans' calls for action and despite its own repeated promises, the Bureau of Reclamation has done very little on waterspreading west-wide. The exception is here in the Umatilla Basin, where Reclamation started getting serious about waterspreading in 1991. It has gone on too long, the four years since then have been long and frustrating for everybody, but just in the last year or so, things are beginning to work. For the first time this summer, the districts and the Bureau signed contracts which temporarily authorize irrigation of the out-of-boundary lands. These contracts help the irrigators, but they also have some benefits for taxpayers and for fish. What is more, they provide funding for a scientific study that is going to support a sound long-term resolution of this issue here in the Umatilla. Also this summer, WaterWatch and irrigators negotiated a deal for new water rights for McKay Reservoir that was based on a 1993 agreement between the Umatilla Tribes and the Westland and Teel Irrigation Districts. Two of the new permits we negotiated authorize irrigation; the bigger one temporarily settles the most notorious case of waterspreading in the west, that of Westland/Teel. The other two new water rights allow McKay to store and release up to 12,000 acre feet of water to benefit the Umatilla River and its fish. This new agreement does not provide a complete or permanent solution, but it is a very important step forward.

So in a nutshell, what we have done in the Umatilla Basin this summer is temporarily resolve many difficult issues in a way that benefits irrigators, taxpayers and Umatilla River fish. We did it through negotiations among the key players in the basin. We are moving toward a permanent solution based on science and we are complying with both state and Federal law. That, in our view, is how waterspreading ought to be handled.

Now Umatilla irrigators say it is not right that they are the only ones in the entire west who have to answer for their waterspreading. WaterWatch agrees with that, but the problem is not what is happening here in the Umatilla Basin, the problem is what is not happening everywhere else. Reclamation has duties that it needs to uphold. Former Commissioner Beard recognized that and repeatedly promised that it would act. Right now it is not acting, but in terms of what it ought to do, there is really surprising agreement among a lot of the key interests on how the Bureau ought to proceed.

Reclamation first has got to gather good information on existing waterspreading, information that it has not got now. Then, it must consider each case individually based on the facts and the law pertinent to that case. The Bureau then has got to pursue an open process which considers all the key interests, gives the public a chance to participate and yields timely decisions. Finally, it has got to comply with Federal and state law.

Using these principles, Reclamation needs to move ahead on waterspreading. It has got to meet its duties under the law. Beyond that, the Bureau should look to provide irrigators with the certainty they need, give taxpayers a fair shake and improve the conditions of our depleted rivers in the northwest and west. Our experience here in the Umatilla Basin is that it is possible to provide water for rivers and fish without drying up farmland in response to waterspreading. Our goal is a river that can be there for all of those who need it, including irrigators, tribes, fish and wildlife, cities, recreational users and the people of Oregon who own its waters.

Thank you very much.

[The statement of Mr. Benson may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Mr. Cooley is recognized.

Mr. COOLEY. Mr. Sampson, were the Confederated Tribes party to the negotiations in 1988 that led to the passage of the Umatilla Basin Project Act of 1988?

Mr. SAMPSON. Yes, that is correct.

Mr. COOLEY. Well, was not this Act brought about to mitigate all irrigations in the Umatilla Basin as of October 1, 1988?

Mr. SAMPSON. Pardon?

Mr. COOLEY. Was not this Act to mitigate the problems we had with the water in the Umatilla Basin?

Mr. SAMPSON. The Act was, from our perspective, to address the tribes' truly reserved fisheries and the water related to those.

Mr. COOLEY. But was that not part of the agreement, to mitigate the problem of the Umatilla Basin, in 1988—was that not the reason for the Umatilla Basin Project Act?

Mr. SAMPSON. Yes, I am sure that is probably part of it.

Mr. COOLEY. And now you are saying that you do not like that and you want to look at something different, according to your testimony.

Number one, I want to say one thing—I take offense to not providing you a copy of the bill because, number one, you have never called my D.C. office, nor have you ever contacted my division office, and so therefore, we did not give it to you, because we only

dropped this bill on Wednesday. You have not contacted us since, because I had my staff go back and check it. That is one.

Number two is Senator Hatfield was very much aware of this bill before it was drafted and he never made any objections to the bill at all.

So two of the things you said in your statement were absolutely out and out lies.

Mr. SAMPSON. Well, if I could——

[Applause.]

Mr. SAMPSON. Our staff did contact your office——

Mr. COOLEY. No, let me go on, it is my time. So those things were taken care of and that is not true.

I want to ask Steve Sanders something. Steve, under Oregon law, H.R. 2392, which would have changed the boundaries for the water boundaries in Umatilla Basin, would that legislation in any way affect the reserved water rights of the Umatilla Tribes?

Mr. SANDERS. No, under Oregon law, where an irrigation district boundary is, is irrelevant to the state water right. The state water right itself identifies what land can be irrigated and unless the state water right adds, as a condition, also compliance with Federal law, which actually a number of irrigation district water rights here in the Umatilla do, then from the state's perspective, we do not care where the boundary is Bureau of Rec purposes.

Mr. COOLEY. And we heard from Mr. Keys before that there is no additional water being used, so therefore the state is not involved in this and it does not impact the tribal reserved water rights?

Mr. SANDERS. I do not believe it would.

Mr. COOLEY. OK, that is what I thought, even though Mr. Sampson says in his thing, it would impact on it.

There is another thing I would like to ask Mr. Sampson. You made a statement, "Because it ignores the impact of fisheries and instream flows, it likely will result in litigation." Litigation? What are you going to litigate on and who is going to pay for the litigation? Is that another taxpayer project you have? You know, I mean we in Congress and a lot of my people are really upset with every time we do something, as well as the agencies, that we are going to get litigated against. What are you going to litigate on this? We are not using any more water, we are not impacting you legislatively with your water rights and we are cleaning up a problem that the Umatilla Basin Project did not solve in 1980, effective the first of 1988. We are just cleaning this whole thing up. Now how does that adversely affect you in any way?

Mr. SAMPSON. Well, first of all, let me say that we are considering litigation. I said that is one of the options we are considering. If you look at the Federal water law, the tribes' senior water right, it has not been adjudicated in this state yet, from our perspective. The other thing is that there has been a detrimental effect to the tribes of the past 150 years because of impact of the dams, irrigation system, on salmon. We have not addressed that yet. We have worked closely in the Basin to develop this project and I will tell you that as a biologist who worked here for many years, I was all for litigation, but I saw the cooperation coming forward.

Now all we are saying is that we believe the NEPA process can be followed, that we will sit down with the local irrigation interests and the state and try to create some solutions to addressing the waterspreading issue.

Mr. COOLEY. Well, the thing is, when I look back on the logical part of this and I look at it and I say to myself—and I will put myself in your shoes for just a moment—if it does not require any more additional water, it does not involve any of your present rights, it does not change anything except it solves a problem that they were not able to do before, and they are so adversely affected by it, I do not understand why because it does not affect you one way or the other. The present water rights are being used and certainly they are senior, some of them, to your water rights. And so therefore, what I think you are trying to say here, and you probably should come out and say it, is that you want to take water rights away from those irrigators that presently have those water rights, and you think by doing this it will increase the fish mitigation problem on the Umatilla River.

Mr. SAMPSON. I am not saying that. You are putting words in my mouth. I guess what I am saying is that when the Basin project was developed, we recognized that it was not enough to restore salmon to the level that we had developed for the Umatilla. We knew that it was going a long ways. If there are opportunities to continue the increased water flows back in the Umatilla, we are going to look at those. That has always been our position. And we have worked with the community in doing that.

Mr. COOLEY. OK. In your statement, you talk about Idaho is dividing up the headwaters of the Columbia River. Correct me, and maybe I am wrong, but I thought the main flow of the Columbia River was really contributed from Canada and the Snake River was just a minor tributary to the Columbia. And looking that we take less than one percent, what impact does Idaho have on the Columbia, total amount of water in the Columbia?

Mr. SAMPSON. Well, I guess we are talking about populations in the Snake River, not the entire Columbia. You are looking at storage impoundments in the upper Snake River. It makes all the difference in terms of the amount of water that is provided for those.

Mr. COOLEY. Well, why do we not talk about impound areas that are contributed out of Canada?

Mr. SAMPSON. We are looking at Canada as well. The tribes have asked that we look at storage projects in Canada.

Mr. COOLEY. I am sorry, my time is up, maybe I will get a chance to come back to you.

Mr. DOOLITTLE. The Chair would just observe, I have let some of the witnesses go over, but we are going to adhere to a strict time line. We are way late on this, so I am going to keep my eye on that red light and cut you off.

All right, Mr. Pombo is recognized.

Mr. POMBO. Mr. Sanders, does Oregon law permit water transfers?

Mr. SANDERS. Yes.

Mr. POMBO. Did the State Water Resources Department approve the transfer of water to lands outside of the project boundaries?

Mr. SANDERS. No, because in many cases no state transfer was required. The state water right was not granted with respect to where the project boundaries were. State water rights are granted with respect to where the district applied to have the water applied in the first place. To the extent that those do not overlap and the state does not enforce the boundary issue, that is a Bureau issue. In other words, we do not care where the boundary is, as long as you are irrigating where your state water right tells you you have to irrigate. And the state water right does not specify where you have to irrigate with reference to the boundary.

Mr. POMBO. So are you telling me that by your knowledge of this, that water transfers were not asked for or not obtained in any instance in this, or just in some instances they were not?

Mr. SANDERS. I am not certain actually where state water right boundary lines up with the Bureau boundary. I guess it's my understanding that the Bureau has applied for a number of transfers to square up the state water rights in the Bureau contract areas.

Mr. POMBO. According to previous testimony from Mr. Keys, transfers have occurred pursuant to Oregon law and the transfers were approved by transfer orders.

Mr. SANDERS. That is probably correct. As I say, I do not have personal knowledge of that, but I would not doubt that that is correct. It has been my experience that the Bureau does, with regularity, apply for transfers under Oregon law. In addition, actually we have another program——

Mr. POMBO. But wait a minute. Would the Bureau apply for transfers or would the individual holding the water right apply for the transfers?

Mr. SANDERS. It would depend on whether you were talking water out of storage or live flow. Also, the Bureau essentially stands as trustee for some of these water rights and they have the right and cooperation of the districts to apply for a transfer. We do require, however, that the landowner consent to a transfer. And so that is going to require the signoff of the district or the individual patron.

Mr. POMBO. According to Oregon law, do the private property owners own the water right or do the districts own the water right?

Mr. SANDERS. It is actually a very complicated question.

Mr. POMBO. I know, we are doing this in California. I just wanted to hear your answer.

Mr. SANDERS. OK. There is a 1925 Oregon Supreme Court case out of Willow Creek that analyzed a single district, and it said half of the patrons owned the water right and the other half of the water right was owned by the district. It depended upon the contractual arrangement between the district and the patron. If the district promised to deliver water, then the district owned the water right. If the district promised to manage the water right held by others, then the individual patron owned the water right. So you basically have to look at every contract between the district and the patron to determine that.

Mr. POMBO. Each and every one could be different.

Mr. SANDERS. Each and every one could be different, and within a single district, you could have different combinations.

Mr. POMBO. Mr. Benson, I understand that WaterWatch was a party to the negotiations in 1988.

Mr. BENSON. That is not correct.

Mr. POMBO. You were not?

Mr. BENSON. I do not believe so. I could be wrong, but I believe not.

Mr. POMBO. They were not?

Mr. COOLEY. No.

Mr. POMBO. So what I have here is wrong.

Have you reviewed that agreement then yourself?

Mr. BENSON. Are you speaking of the legislation?

Mr. POMBO. No, the Umatilla Basin Project Act of 1988.

Mr. BENSON. Certainly.

Mr. POMBO. What is your understanding—from that piece of legislation, what is your understanding of how the boundary changes would be handled?

Mr. BENSON. I guess as I read the legislation, certainly the Act allows the boundaries to be expanded, with the approval of the Secretary. And then Secretarial approval kicks in the requirement of complying with other Federal laws, which includes the ESA taking into the government's account trust responsibility to the tribes, and complying with NEPA.

Mr. POMBO. In your testimony, you cite the Department of Interior's Inspector General's report that claims that 75 percent of the water to ineligible lands could have been used for instream flows. Did the Inspector General take into account other possible junior water right holders in that statement?

Mr. BENSON. The IG's report was not specific as to how that would go. It indicated that it would—that water could legally go to instream use under state law, and I think our recent discussions in the Umatilla indicate how that can go under state law, and can be made legal under state law. But the IG did not specify how that would take place.

Mr. POMBO. Thank you.

Mr. DOOLITTLE. Mr. Cremeans is recognized.

Mr. CREMEANS. You know, I think, if for no other reasons, this hearing today demonstrates that the American people really swim in a regulatory ocean of enormous proportion. In 1994, I am told that the administration issued 4866 regulations, in 1994 alone. Most of those are attributable to the United States Congress. So it is very important that you be here today and participate in these hearings. I would like to say, as a matter, those of you who are here assembled have been extremely patient. Those of us sitting here go through this on an average of ten to 12 hours every day. So if you spend three or four hours with us a day, you have a sense of what we go through each and every day.

I would like to focus attention on paragraph two of Mr. Sampson's testimony, and I would like to invoke a response from those here assembled, as I know this issue is very important to you. Included in there, Mr. Sampson, is a line that says, "The people of this region support drawing down reservoirs to save salmon." I would like to ask you by way of a show of hands, do you support—if you do, raise your hand—the drawing down of the reservoirs to save the salmon. Raise your hand if you do.

[Show of hands.]

Mr. CREMEANS. How many of you oppose it?

[Show of hands.]

Mr. CREMEANS. Rather dramatic.

Now I would like to also ask—Mr. Sampson says that the drawdowns would be good for irrigation. Would you agree to that? Show of hands. Do you agree that drawdowns would be good for irrigation?

[Show of hands.]

Mr. CREMEANS. How many of you would oppose that?

[Show of hands.]

Mr. CREMEANS. Rather dramatic.

You know, in Ohio, inasmuch as I live along the Ohio River, and each and every year between the months of December and spring, we have too much water, I would love to send you a lot of the flood water. But two years ago, Mr. Eldrige, the American Electric Power Company became involved in a long wall mining project, I am sure you are vaguely familiar with that, perhaps even more familiar than I may know. But it resulted in a monumental, millions and millions of gallons of acid water that had to be treated or released into a tributary, which finally resulted in going directly into the Ohio River. As a result of that, a political decision had to be made, and the Governor allowed, through consultation with the various agencies—EPA, Federal, state and local—to release that water. Now I have been told since childhood that the state of West Virginia really owns the Ohio River, and consequently, the state of West Virginia did file a multimillion dollar lawsuit against the state of Ohio. That has not been litigated yet.

My question is, Mr. Sanders, who truly owns the Columbia River? You say the public owns the Columbia River. If I want to install 25 or 30 1500-gallon vertical lift pumps, do I, if I am on the other side of the Columbia River, seek permission to install those through the state of Washington? And yet, if I am on this side, do I go through the permitting department of the state of Oregon?

Mr. SANDERS. You are correct. If you are using water in Washington, you would apply to the state of Washington for a water right. As to the allocation of water between the state in an interstate stream like the Columbia, there are a number of legal mechanisms by which those rights could be allocated. One, and the principal way, is for a compact created by the states and approved by Congress. We have been attempting for some number of decades now to compact the Columbia River and allocate the water as between those states. That really has not gone anywhere for a number of different reasons. Another way is for a suit of original jurisdiction between the states in front of the Supreme Court. This is in essence what has happened on the Colorado. On the Colorado, a combination of compacting and original jurisdiction suits.

In addition, we have had informal discussions with the other states to coordinate our various water strategies so that all the states are making some efforts to protect endangered fish—for example, to fairly allocate water between irrigation and other out-of-stream uses between the different states. In addition, the states can, and Washington has already established an instream flow on the Columbia. We have not yet done that, but that would be an-

other mechanism by which states could set equivalent instream flows on an interstate stream like this.

Mr. CREMEANS. Spoken like a true attorney.

[Laughter.]

Mr. CREMEANS. You know, two quick concluding remarks——

Mr. DOOLITTLE. Very quick, please.

Mr. CREMEANS. Very quickly. Am I over, Mr. Chairman? I will yield, thank you.

Mr. DOOLITTLE. Ms. Chenoweth is recognized.

Ms. CHENOWETH. Mr. Chairman, I would like to continue the line of questioning started by Mr. Cremeans, and I think he was pursuing something that is terribly important. And I really appreciate your informative testimony, Mr. Sanders, it was very interesting to me. But we apply to the Water Resources Department here in Oregon for a use right of the water, right?

Mr. SANDERS. Right.

Ms. CHENOWETH. So you grant—the state of Oregon grants to an applicant a use right which is appurtenant to the land, if it is for agricultural purposes.

Mr. SANDERS. Yes.

Ms. CHENOWETH. And that becomes a beneficial use, or it is under your Constitution.

Mr. SANDERS. Yes, under state statute.

Ms. CHENOWETH. And state statute, OK. Who owns that water?

Mr. SANDERS. The state statute specifies that the people of Oregon own the water and the Water Resources Department and Commission hold it in trust for those people.

Ms. CHENOWETH. So the state of Oregon owns the water.

Mr. SANDERS. Yes.

Ms. CHENOWETH. And the state of Oregon owns the unallocated water.

Mr. SANDERS. Yes.

Ms. CHENOWETH. Water not allocated to a specific use.

Mr. SANDERS. Yes.

Ms. CHENOWETH. How in the world is it then that National Marine Fisheries Service can impose a moratorium on any further withdrawals? Where do they get their jurisdiction?

Mr. SANDERS. Well, of course, there is the supremacy clause. Certainly the state of Oregon is obligated to comply with those laws enacted by Congress which supersede our own, even our constitutional provisions.

Ms. CHENOWETH. The supremacy clause would apply if there is a conflict in constitutional law or statutory law, right?

Mr. SANDERS. Yes.

Ms. CHENOWETH. So you must be referring to the Endangered Species Act?

Mr. SANDERS. I think if you are referring to National Marine Fisheries' determination that certain flows are required to support the fish, I think there is no case that I know of that describes whether the Endangered Species Act or a restoration plan under the Endangered Species Act creates a water right. There is legal ambiguity around that question.

Ms. CHENOWETH. That is very interesting to me. So there is no constitutional conflict or statutory conflict. There is an implication or a reading by National Marine Fisheries Service?

Mr. SANDERS. Well, as I understand it, technically what is prevented would be a take, so that if an irrigator, for example, were to suck smolts out, you know, that would——

Ms. CHENOWETH. You know, because my Chairman can get awfully ornery with that hammer, and I do not want to get hit——

Mr. SANDERS. All right.

Ms. CHENOWETH [continuing]. I just want to say that it would seem to me that the unallocated water that you referred to in your testimony is still under the control of the state of Oregon, and so even under the Endangered Species Act, Section 1535, it requires, for the use of any water, that any person—and that is including the United States government—purchase the water. That is why I was questioning Mr. Keys as I was.

Now the cost of application for a water right in Oregon is what, for the first cubic foot?

Mr. SANDERS. Well, it depends on the type of use. For irrigation, I believe it is two dollars for the first acre to be irrigated and one dollar after 100 acres. For other uses, it is $100 for the first acre foot and I think it is about $50 for over 50 CFS.

Ms. CHENOWETH. So would flow augmentation be considered other uses?

Mr. SANDERS. Yes, it would.

Ms. CHENOWETH. Not irrigation, so it would be pretty expensive to purchase the water as required in the ESA.

Mr. SANDERS. That is referring to the application fee——

Ms. CHENOWETH. That is just the application fee.

Mr. SANDERS [continuing]. it does not refer to the value of the water right for condemnation purposes.

Ms. CHENOWETH. Right, I misstated my question. It is still green, Mr. Chairman.

Just the cost of the application for the water right would be very expensive for this volume of water out here, considering a five foot drawdown at John Day.

Mr. SANDERS. Yes.

Ms. CHENOWETH. OK.

Mr. SANDERS. Expensive is a relative term, of course.

Ms. CHENOWETH. It is relative to the taxpayers, I can tell you. We really feel it.

Now in the Northwest Power Act, this is one of the reasons why the mitigation has taken place, is it not, Mr. Sanders?

Mr. SANDERS. I believe so, although I certainly do not consider myself an expert on the Northwest Power Act.

Ms. CHENOWETH. On the Northwest Power Act. You know, I find it very interesting, the Northwest Power Act has six goals set forward in that Act, and the first five deal with the efficient supply of electrical power to the Columbia River system and facilitating the region's power system and providing for renewable resources. And then finally, the last goal or one of the last goals was to protect, mitigate and enhance the fish and wildlife.

Did that mean that mitigation goes to everyone, including local units of government, or just to the tribes?

Mr. SANDERS. I do not believe it was intended to be mitigating for any particular purpose, and it was really intended, I believe, to maintain and establish fish and wildlife without respect to who uses them.

Ms. CHENOWETH. Mr. Sanders, you have been most helpful. And I just am going to get one quick question in, Joyce Hart——

[Gavel.]

Ms. CHENOWETH. I will talk to you after the hearing, thank you.

[Laughter.]

Mr. DOOLITTLE. I am going to recognize myself for my five minutes, and will yield such portion of it to Mr. Cooley, as he may desire to take.

Mr. COOLEY. Thank you, Mr. Chairman.

Mr. Sanders, I want to pursue one other part of it. Are the tribes happy with the results of the fishery portion of the Act so far, of the Umatilla Act of 1988?

Mr. SAMPSON. Of the Basin project?

Mr. COOLEY. Yes.

Mr. SAMPSON. I think we have seen results and I think we are glad to see that these runs are returning. So I would say in terms of the fisheries, we have gone from 1500 steelhead in the last 15 years up to as many 10,000 salmon to the Umatilla. The objective is to have 42,000 salmon returning to the Umatilla Basin.

Mr. COOLEY. Is that historically defensible, or is that just a figure that came up?

Mr. SAMPSON. No, that was based upon historic data from the tribes, it was based upon historic records from the Fish and Game Commission way back when, and developed based upon the habitat that is in the basin.

Mr. COOLEY. Could you provide that information for the Committee? I would appreciate that.

Mr. SAMPSON. Yes.

Mr. COOLEY. Do you manage portions of the fish recovery program? Does the tribe manage portions of that?

Mr. SAMPSON. In the Umatilla Basin, we probably are the lead manager in terms of what is going on in the Umatilla. In the Columbia Basin, we are only one of 13 tribes.

Mr. COOLEY. We are just talking about Umatilla.

Mr. SAMPSON. Yes.

Mr. COOLEY. You manage the Umatilla recovery program?

Mr. SAMPSON. In conjunction with the Oregon Department of Fish and Wildlife and other Federal agencies.

Mr. COOLEY. What other agencies?

Mr. SAMPSON. Fish and Wildlife Service has assisted us, National Marine Fisheries very generally. Bureau of Reclamation has done a lot of work.

Mr. COOLEY. OK. How is this operation paid for?

Mr. SAMPSON. Well it is based upon a variety of sources. One is ratepayer funding, which is through the Bonneville fish and wildlife program.

Mr. COOLEY. That is part of the——

Mr. SAMPSON. Part of the Power Act.

Mr. COOLEY. —half a billion dollars a year we are spending on fish mitigation?

Mr. SAMPSON. Yeah. The total restoration program in the Umatilla collectively will be about $50 million. The other is from taxpayer money that is invested through the Umatilla Basin Project itself. And then there are some other state moneys that are used as well.

Mr. COOLEY. OK. Could you tell me how many people are members of the Umatilla Tribe?

Mr. SAMPSON. There are about 1716 last time I checked.

Mr. COOLEY. And so far, we have spent $50 million.

Mr. SAMPSON. Correct. Not fully——

Mr. COOLEY. No, I know, that is only the downpayment.

Mr. SAMPSON. Right.

Mr. COOLEY. If I remember correctly, from looking at the information that I read before coming to this meeting, the main reason for your involvement in the Umatilla River and the restoration project was primarily economic base, is that correct? Fishing for economic and religious reasons?

Mr. SAMPSON. That is correct. Subsistence,——

Mr. COOLEY. Subsistence.

Mr. SAMPSON. —religious purposes,——

Mr. COOLEY. Religious purposes.

Mr. SAMPSON. —and economic.

Mr. COOLEY. And economic.

Mr. SAMPSON. Correct. Those are the bases for our tribal fishing.

Mr. COOLEY. So by making the statement that spending $50 million on a downpayment and probably looking at another $40 million or $50 million, economically, if you were a businessman, would it not be better for the American taxpayers to maybe give every member of the tribe a million dollars and get off cheaper here?

Mr. SAMPSON. No.

Mr. COOLEY. Well, it solves your economic problem and it certainly would help out your religious part.

Mr. SAMPSON. Well, actually, Congressman, the tribe has been—and I think this is often overlooked and I think all the people in this room need to consider—that people are talking about a sacrifice in their economy today. We have sacrificed for many years, Congressman, and our population, our tribe, was very wealthy at one time, because of the salmon economy. And nobody has looked at that, nobody has considered the economic impact to the tribe, the standard of living to the people. Nobody considers the lack of cultural value——

Mr. COOLEY. I think half a million dollars per tribal member would be quite an economic boon, probably more than you could every fish out of there no matter what.

Mr. SAMPSON. Well, we do not want that.

Mr. COOLEY. Well, what happens along the way if for some very mysterious reasons, the people of not only Oregon, but the people of the United States sit down and follow along with Secretary Babbitt's statement that they need to have some kind of return for their investment, and they decide that $150 million or $200 million or a billion dollars is just not a good return for the amount of salmon you are going to get back in that area? What happens if that happens?

Mr. SAMPSON. Well, I think a lot of times we do not consider the economic benefit of restoring salmon to this basin. I think that has never really been considered. You talk about fishing economies on the coast, you talk about fishing economies on the Columbia, in the ocean, Alaska. And not only in this region, we have not really considered—I am sure from Idaho, they recognize the benefit of fisheries to recreation, tourism and sports fishing.

Mr. COOLEY. Well, fisheries are something different than these runs that you are trying to promote, not just fisheries, it is actually runs that we might not be able to restore, no matter what we do, except if we remove the dams. And I just cannot believe that the people of America or the northwest would agree to removing the dams for salmon. I just cannot believe that. Now maybe I am wrong, but I just do not believe that.

Mr. SAMPSON. Well, it is something we should look at. And I think the other thing, Congressman, you know, we have a solemn contract obligation with this country, and that is all we are asking people to uphold. And that is the treaty that we signed.

Mr. DOOLITTLE. Mr. Cremeans has asked unanimous consent to have one additional minute.

Mr. CREMEANS. Thank you, Mr. Chairman, that is very kind of you.

First of all, Mr. Sampson, I would like to say I admire you for coming here and offering your testimony today. Wes picks on me too, so I have an instant affection for you.

You know, the prevailing mood in Congress is one in which states' rights hopefully will take more of a role in the future of government. Do you believe, especially with such overwhelming show of hands, do you truly believe, both of you, Messrs. Sanders and Sampson, believe in the simple principle of majority rule?

Mr. SAMPSON. Well, I guess might equals right and you have to under those circumstances. I think that your survey does not represent the northwest though. Many people in this community probably have—and I understand their concern for their economy—but if you look at the people in the northwest, in the four states of this region, have supported a salmon plan that looks at that, calling for drawdowns in the long-term, you will see that the governors who represent, or who have representatives on this Northwest Power Planning Council and the public hearings that have gone on, support that.

So I think you have to look at it much broader than that. You are getting a very local perspective. And again, I do not have anything against anybody here. I used to live in Echo and my father rode—my grandfather rode the irrigation ditches here, I lived amongst a lot of these people. It is not our objective to destroy this economy, we are trying to work on something here and we feel that we can do it together. I agree with what you all are saying, that it has to be done here locally. The tribes must be respected, our ability, our experience, and I think people in the northwest need to see that we have restored salmon here and we have very reasonable actions that can happen. Now it is not going to be easy, but my children, my grandchildren and probably when all of us are gone from this table, they are the ones that are going to look back and see if we did what is right.

Mr. CREMEANS. Thank you, Mr. Chairman.

Mr. POMBO. Mr. Chairman, I ask unanimous consent for an additional minute to follow up on the question that was just asked, and I will not take all the time.

Mr. DOOLITTLE. Any objection?

[No response.]

Mr. POMBO. Mr. Sampson, the question that Mr. Cremeans asked was do you support majority rule, and I think that your answer is that you want the rights of the people you represent protected, regardless of majority rule. And that is what the Bill of Rights to our Constitution was all about, that is what contract law is all about. But I believe that the people in this room and many other water users throughout the west, also want their rights protected against what may be majority rule. If your assumption is correct that in the Pacific northwest that the majority of people would support something that you may agree with, does not necessarily make it right when you are taking away the individual rights of the people who may be sitting in this room or who may be water users throughout the rest of the west. And what we have to do is strive to protect the individual rights of everyone concerned, regardless of what the majority may feel at that moment, because of particular media attention to a problem or because of a prevailing political correctness which may be out there right now. We have to protect the individual rights, whether they are your rights, whether they are the power company's rights or whether they are the irrigators' rights. What we have to do when we pass legislation is protect those individual rights.

I yield back my time.

Mr. DOOLITTLE. Thank you.

Mr. SAMPSON. If I could answer quickly. I am not here to take——

Mr. DOOLITTLE. No, the time is up.

The panel is thanked for its testimony, please respond to our written questions in writing, and we will hold the record open for your timely response. Thank you very much.

Panel number three is called up.

Sitting on panel number three is Hugh Moore, Mike McCabe, Doug Breese and Scott Cooper.

I would admonish the witnesses to confine your remarks to the allotted time. Some of the members have a plane schedule to meet tonight and it is going to be important to wrap this hearing up in the time allotted.

The first person to be recognized is Hugh Moore, who is Director of the Ochoco Irrigation District. Mr. Moore.

STATEMENT OF HUGH MOORE, SECRETARY-MANAGER, OCHOCO IRRIGATION DISTRICT

Mr. MOORE. I would like, on behalf of the 750 water users of Ochoco Irrigation District, to thank you and your Committee for hearing our problems and our needs.

I am Hugh Moore, I am Secretary-Manager of Ochoco Irrigation District in Prineville.

We are located in the geographic center of the state and our area is considered to be semi-arid with about 9.5 inches of precipitation

annually. We are dependent upon stored water, which we get from two sources—one is from the Prineville Reservoir, which is on the Crooked River and the other is Ochoco Reservoir which is on Ochoco Creek.

Due to the canal size and pump capacity of the Crooked River system, we rely very heavily on Ochoco, which is our primary source. It supplies about 60 percent of our demand. Water is applied to the 20,145 irrigated acres by sprinklers which require a constant amount for the duration of the season. We are very limited when we do not have ample water from Ochoco.

The Bureau of Reclamation began their study of Ochoco Dam under the Safety of Dams Project in 1985 by installing measuring devices known as piezometers, in and around the dam. During the spring filling in 1989 high readings were recorded inside the structure and as a result, a restriction on the fill level was imposed. The restriction was placed at elevation 3110, or about 55 percent of capacity.

The reservoir was drawn down in the fall of 1990 so that the Bureau contractor could install a blanket which consisted of geotextile and geomembrane over an area on the right abutment upstream of the dam itself. Since the region had been experiencing drought since 1985, the reservoir was never filled to the restricted level, so consequently the new blanket was never tested.

During the drought years, there are 5000 acres which receive only Ochoco water, that is all that is available to them, and we were able to share with them about three-quarters of an acre of water per acre during the season. That resulted in about a 50 percent reduction in land, the other part laid fallow. 1993 was a good year. We were able to allocate normal water supplies which is two and a half acre feet per acre, and were able to give the farmers the opportunity to plant their crops in the fall—September and October—of 1993. Fall planting is recommended rather than spring planting because our soils are very light and susceptible to wind erosion during the spring. They had planted their crops and the Bureau had notified everybody by letter, namely the irrigation district, and through meetings, that they would start their construction on Ochoco Dam in August or September of 1995. In December of 1993, due to a decision that was made, the Bureau announced that they had accelerated their schedule and that they would begin construction in April of 1994. The farmers had already arranged the sale of their crops when they contacted them, so there was a lot of crops that were planted that would be lost. The pool was ordered drawn down in December of 1993.

The Bureau of Reclamation recognized the financial problem that it would cause for the growers, so the 1994 construction payment of $44,000 plus that we normally pay, was deferred. We will pay that this year, along with our regular payment, so we will be making a double payment this year. They also recognized the financial problems, so they made tort claims available to the growers there to pay their out-of-pocket expenses. There were a few of the growers who turned in their tort claims early. The Bureau said that they could not process these until after the harvest, so they could get an average, so there were a lot of them planning on turning in their tort claims in the fall. There was a deadline and we received

notice of this about two weeks before the deadline. Many of the farmers were out hunting, so they decided to go with the ASCS program. It was no longer available because it was deemed that the drought that we had was man-caused rather than natural. So there went several years of hard work down the tube in one year.

I suppose with this next drawdown that we are having now, that if we do not have water next year, many of the growers out there will not survive. So consequently, we are asking you to assist us with some kind of legislation that would help us get through these very trying times, so that many of our growers will not lose their homes and things.

Thank you.

[The statement of Mr. Moore may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Mr. Mike McCabe is recognized. Mr. McCabe is the Commissioner of Crook County.

STATEMENT OF MIKE MCCABE, COMMISSIONER, CROOK COUNTY, OREGON

Mr. MCCABE. Thank you, Mr. Chairman. I assure you I will not be up against the red light, and there is a reason for that. My esteemed colleagues have both been vaccinated with a phonograph needle.

Mr. Chairman, I am Mike McCabe. It is important for you to note, sir, that I am also a member of Ochoco Irrigation District.

I am here to visit with you as Commissioner about the adverse impact the past several years of work on Ochoco Reservoir has had on irrigators, residents, county government and their respective departments.

My remarks will primarily be confined to my term in office, which commenced January 1, 1992.

The Crook County Court has worked closely with OID on all matters. Letters were sent to then Governor Barbara Roberts requesting drought declarations during the term of the drought. Because of water right of ways and canals and culverts, we have an equipment exchanging agreement with the ditch company and we continue to be very involved with all aspects of the efforts that are going on to fix Ochoco Irrigation Districts' dam.

Ochoco Commission has received calls from local residents who have lost their domestic wells. We hear from many of the visitors to Ochoco Lake Park, fishermen, citizens concerned about flooding, and irrigators. While it is our job to deal with these issues and these concerns, I just want to mention that, because of the broad aspect it has throughout our community to all those living there.

So, given this importance, this project has been wrought with frustration from its inception. For example—and I take excerpts from OID Board minutes—on January 7, 1992, OID was talking about the repayment on a fabric liner that was placed on the upstream face of Ochoco Dam at a cost of just less than one million dollars. At the January 7 meeting, there was never a mention of downgrading that dam or changing it to a flood control structure.

On February 11, one month later, Mr. Keys was at a meeting and we perceived at that time that this fabric liner was not going to work, and he presented us three alternatives—a concrete retain-

ing wall to replace the current earth structure; reduce the structure to flood control of 16,000 acre feet; or breach the dam.

Going to these meetings, we feel, as far as the county and what we have done, have been mostly fruitless. It is apparent that the most recent work developed problems in June, 1995, the county was requested to enact our Emergency Management Team, which we did. I will tell you that not irrigators, not anybody in the community feels that a faulty dam is worth any peril to human life. That is not an issue. But it is costly to us and it is just time to kind of get this underway and get it concluded.

While Ochoco Dam has presented many complex issues, the BOR has been concerned with and studied Ochoco Reservoir intently, in my opinion, for the last ten years. Given that, I have the following questions for the Bureau of Reclamation:

Why does the Bureau of Reclamation have the luxury to be indecisive on all issues and then be able to change previously agreed upon time schedules at their discretion?

Question two—why did over 50 percent of the cost of the fabric liner repair, as well as the most recent work costing $25 million, go to administration? In our local government, this is unheard of and I think that is justifiably so.

What is required now to restore Ochoco to fully operational capacity of 46,000 acre feet?

Given the apparent complexities of this structure and the erratic stance of BOR, I propose the following solution for your consideration:

Rent the ground from OID patrons for one year, which will allow time for the BOR to fix the structure without outside influence. This would allow users to pay their OID water charges, real property taxes and those other costs which impact the county directly. Most importantly, it will allow recreationists, tourists and irrigators a known timeframe to deal with. Believe me, the uncertainties associated with this project have caused countless hours of anguish throughout our community.

In closing, I thank you for allowing us time to be here. Restoring Ochoco Reservoir to its full operation is one of the most important issues involving all Crook County residents and I hope that you can join with us in reaching a solution.

Thank you very much.

Mr. DOOLITTLE. Thank you, sir. Mr. Doug Breese is recognized. Mr. Breese is with the Oregon Farm Bureau Board of Directors. Mr. Breese.

STATEMENT OF DOUGLAS BREESE, OREGON FARM BUREAU BOARD OF DIRECTORS

Mr. BREESE. Mr. Chairman, members of the Committee, my name is Doug Breese and I appreciate the opportunity to appear before you today. I am President of the Oregon Farm Bureau, but more importantly today, I am a farmer with more than 300 acres irrigated by water stored in the Ochoco Reservoir. That is not a great amount of irrigated acres, but to me that is a very important 300 acres and it supplies hay to feed the 400 head of cows that are part of our operation. It also irrigates 50 acres of peppermint that we established this year upon being assured that we would indeed

have a reservoir upon which we could depend. I appear before you representing also the other users of Ochoco water, who likewise are adversely affected by the uncertainty of water delivery in the future. Our ability to make correct management decisions is nil. Our ability to assure ourselves and our bankers that we will have viable crops is nil. Our future is clouded, at best.

The Bureau of Reclamation is charged with administering the Safety of Dams Act. We understand that fact and appreciate the charge that Congress gave to the Bureau to protect human lives. No one wants to operate with a facility that might endanger lives and property. We would like to believe that neither Congress nor the Bureau of Reclamation wants to watch the demise of the farmers of their affected 12,000 acres served by the stored waters of the Ochoco Reservoir.

For the last several years we have had a potpourri of water conditions with which to deal. First, we had the sporadic years of precipitation that caused us to deal with less than a full allocation of water. Now these last four years, we have drought conditions plus the Bureau causing drought conditions by not allowing the storage of water for irrigation due to the uncertain capability of the dam itself. We also face an uncertain future as to whether or not we will continue to have a storage facility to deliver this vital resource—our water.

As owners/operators of the land, we are accountable to ourselves, our bankers and to our community to maintain viable operations that provide a living for our families, pay for our investments and contribute to a healthy economy. With the uncertainties with which we are faced, we are losing cropping opportunities, we are losing crops already established, and facing disruptions in normal cropping patterns that reduce our ability to plan and prepare for future needs. We are forced to plant crops such as grain hay that may make some semblance of a crop with rain but no irrigation, and will yield significantly less return to our annual fixed costs.

On an average operation, we are faced with annual fixed costs that exceed $200 per acre. This consists of interest payments on long-term debt, not including principal payments or rental costs; property taxes for county government; operation and maintenance of the water district; insurance; et cetera. These are our ongoing every-year expenses, not our annual planting costs, which the Bureau attempted to address last year when they agreed to settle some tort claims for planting activities based on their original plan of action for the fix on Ochoco Dam. These ongoing costs have not been addressed by anyone but our bankers when we attempt to renew our annual operating loans.

There are no disaster programs that provide relief for man-made disasters. Crops lost due to a natural disaster, such as a widespread drought, may be covered by disaster programs authorized through the Agricultural Stabilization and Conservation Service. Likewise, there is no coverage under multi-peril insurance for crops lost to man-made disasters. There is no relief for the income potential denied to the irrigators under the Ochoco Reservoir due to the decisions made by the Bureau of Reclamation.

We would credit the Bureau for their attempts to speed up the project and get the fix on line in the one year, to cause us the least

disruption. However, in view of the results of the fix, maybe this attempt to bypass some of their normal bureaucratic actions did not result in the desired cure. We would suggest that this Committee might want to take a close look at procedures followed by the Bureau that non-bureaucrats find so frustrating. Even though we have been privy to some town hall type meetings, we have been told very little about what is really going on with respect to all of the activity involved with the fix on Ochoco Reservoir. I would also suggest that much of the information released by the Bureau for information and press releases has been less than complete and has resulted in much confusion, not only in our county but across the state and into the neighboring states. Wherever I travel across the state as President of the Farm Bureau, I continue to be met with questions and comments regarding the Bureau and Ochoco Reservoir. The bottom line is that people's perception has not been favorable for the Bureau.

The Ochoco Dam represents a mandated government program—a fix. It is a fix that has cost a lot of money. It has cost the producers lost income for crops that were not grown—more than five million dollars. It has cost the community lost income because the dollars that were not earned could not roll over downtown—more than twelve million dollars. It has cost the producers directly for the added expense of paying for the fix. It cost the taxpayers of this country directly for the money appropriated for the fix. This is $25 million. It has cost the Bureau integrity—integrity in the eyes of the citizens of this country. It has cost Congress integrity also because of the lack of accountability surrounding this part of government—spending of tax dollars.

Every year, the farmer under an irrigation project must declare his integrity by vouching for the number of acres he irrigates. Until he signs that statement, he cannot be delivered water. Until he pays for his annual share of the cost of operating that project and any fixes attached to that project, he cannot be delivered water. But the Bureau may say even though those requirements have been met, they may not deliver any water for their reasons—dam safety, drought, whatever. However, if the farmer does not pay for non-delivered water, the Bureau, by law, has the right to take his property. But there is no law or provision for the converse—if the Bureau does not deliver, they do not owe the farmer a nickel.

We would request that this Committee would consider several different concepts or ideas in regards to our dilemma:

Number one, a complete and factual accounting of the taxpayers' dollars associated with this project and the manner in which the Bureau personnel dealt with the project and people.

Number two, a complete and factual accounting of the way this project was designed compared to the way it was completed.

Number three, consideration of a method of preserving the affected users' financial stability.

We realize that this Congress was elected by the people of this great country to provide some new direction in the method of operation of our government. Yours is a difficult task. The Bureau of Reclamation provides just one example of too much big brother.

That is a good place to stop.

Mr. DOOLITTLE. Thank you. Scott Cooper, Director of the Prineville-Crook County Chamber of Commerce, is recognized. Mr. Cooper.

STATEMENT OF SCOTT COOPER, EXECUTIVE DIRECTOR, PRINEVILLE-CROOK COUNTY CHAMBER OF COMMERCE

Mr. COOPER. Thank you, Chairman Doolittle and Representative Cooley and members of the Subcommittee. I bring you greetings on behalf of the 300 member Prineville-Crook County Chamber of Commerce.

My purpose today is to offer you a perspective of a community member, not a farmer, on the economic impact of the draining of the Ochoco Reservoir.

Ag-related payroll in Crook County is slightly less than $1 million county-wide. Ag receipts are approximately $40 million annually, with just under half that amount derived from crops. Mint is the most important crop, accounting for approximately 25 percent of commodity sales and hay and forage account for another ten to 15 percent. Both these crops grow only under irrigated conditions in Crook County and therefore, the loss of the water contained in the Ochoco Reservoir, on which one-third of our irrigated acreage is solely dependent, severely impacted our ability to produce these commodities. My best estimate, based on conversations with local growers, is that production of them was off about 40 percent as a result of the loss of the water contained behind the Ochoco Dam. The economic impact was approximately $5.2 million in lost gate receipts.

From here, the picture is somewhat less clear, because as you are aware, indirect impacts on any local economy vary highly on which economist you talk with which time of year in which state. However, you can use a conservative multiplier of 2.3 to yield an economic impact just shy of $12 million, which, although our figures were independently derived, is very close to the figures provided by the Farm Bureau moments ago.

Also affected by the draining of the reservoir was the county's fledgling tourism industry, which depends very heavily on Ochoco Lake State Park and the Prineville Reservoir State Park. Indeed, these two bodies of water account for just over half of the visitor traffic to the area during the all-important summer months when approximately 70 percent of the tourist business in the area is experienced.

It is important to consider both these reservoirs in this analysis because we found to our dismay during the entire episode that tourists largely do not distinguish between the two, and the publicity associated with the draining of the one was experienced as a loss of business at both. Based on visitor registrations at the Chamber of Commerce, room tax collections and experience of the local hospitality industry, the total loss of visitors as a result of the dam was somewhere between 14 and 20 percent during the summers of 1994 and 1995, the low figure representing the Chamber's estimate and the high figure representing individual businesses' estimates. The figures are somewhat lower than they might have been otherwise, because while tourists disappeared from the local scene during the period that the dam was repaired, construction

workers filled many of the spots in local hotels that would have been occupied by tourists. In any case, even allowing for this small saving grace, one can use the visitor impact studies conducted by the Oregon Tourism Division by Dean Runyan and Associates to calculate a loss of approximately $2.8 million to the tourism industry, county-wide.

Add together direct losses to agriculture of $5.2 million, indirect losses to the greater business community of $12 million and losses to the hospitality industry of $2.8 million and you get an overall economic impact of an even $20 million. That in turn translates to a reduction in gross personal incomes within the county of less than 1.5 percent. This is a significant reduction, although it is certainly not the kind of reduction that will throw the local economy into a recession and the community into crisis. But in considering this entire affair, I think it is important from a community standpoint to look beyond the economics. No doubt, our community will soon move beyond this unpleasant period in community history. Bigger problems will distract us, problems such as how to pay for schools in a fast-growing community, how to replace our significant economic dependence on the still struggling timber industry and how to keep our streets, our homes and our kids safe.

But as we move on, we will do so a little more jaded, a little more cynical and quite a bit less willing to rely on the aid and assistance of the Federal Government to help us in our time of need. And this is the real lasting and ultimately, from a community standpoint, most serious consequence of this entire affair.

Because while I and the other 16,000 residents of Crook County may not have the technical backgrounds to understand the mechanics and physics behind dam construction and repair, we do have the intelligence to ask some very simple questions for which there ought to be coherent, trustworthy and consistent answers.

Some of the questions which we are still asking are these?

Why does a Federal agency, funded with millions of dollars of taxpayer money and staffed by droves of presumably competent engineers, require three tries before it can fix a dam known to leak since it was built nearly 80 years ago?

Can we really trust our lives and belongings to a Federal agency charged with protecting us from faulty dams, but apparently incapable of correctly assessing whether the dam is or is not really safe and is or is not in danger of imminent failure?

And finally, in the long run, when the Bureau packs up and goes home, and mint begins to grow again, and tourists come back, will we really be able to consider ourselves safe and how soon will it be before they come back again?

In the final analysis, the issue is not economics, it is trust. Trust, which like the reservoir, was intact one day and gone the next.

Thank you for the opportunity to appear.

Mr. DOOLITTLE. Thank you, sir. Mr. Cooley is recognized.

Mr. COOLEY. Mr. Keys, I hate—this must be a horrible day for you. Anyway, let me ask you something, instead of going over the thing that we know, that the dam apparently exceeded cost estimates by 50 percent, is that true, approximately exceeded the cost?

Mr. KEYS. No, sir.

Mr. COOLEY. How much did they exceed the cost estimate?

Mr. KEYS. We do not know yet, sir.

Mr. COOLEY. The dam is not complete?

Mr. KEYS. It is not, it will not be——

Mr. COOLEY. Is there an errors and omissions policy by the contractor to make sure that they replace the dam if it is not properly built under your specifications?

Mr. KEYS. Mr. Chairman, Mr. Cooley, what I mean is that it will not be complete and we will not know the costs until we are done.

Mr. COOLEY. I thought you were done with it.

Mr. KEYS. Mr. Cooley—Mr. Chairman, Mr. Cooley——

Mr. COOLEY. No, no, you had about three or four weeks where you had finished it and then all of a sudden you started getting these huge—what were you, at 1900 CFS before you reconstructed and you went to 4000 or 6000? What happened here?

Mr. KEYS. Mr. Chairman, Mr. Cooley, could I back up and give you a little background?

Mr. COOLEY. Yes, please.

Mr. KEYS. First, I would say that I do not disagree with anything anyone on this panel has said tonight. I understand the frustrations that they are dealing with, and I will tell you that the Bureau of Reclamation feels the same frustration that these people are trying to deal with. The first thing you have to remember is this is not—it is not a Bureau of Reclamation facility. It was not built by the Bureau of Reclamation. It was only included in the Bureau of Reclamation Safety of Dams Act by the Safety of Dams Renewal Act of 1985.

Yes, in 1948, we did some work on it for the district, and you have to consider the technology that was in effect at that time. Yes, we tried to put a blanket on a portion of that fill and that embankment, the foundation, on the right side two years, three years ago. Yes, it did not work.

You have to remember that this dam was built on one of the worst places you could ever build one, it was built on a landslide originally. And it was built with hydraulic fill conditions, methods. They built it with hydraulic fill, which has since been shown to be very dangerous; and yes, it leaked like a sieve at times.

In 1989, when we were monitoring the thing, after a drought, after the core dried out, we saw a tremendous jump in the amount of seepage and the pressures involved there. We put more monitors in and have been monitoring it very closely.

Yes, in 1993, we told the irrigation district that they would have a water supply the next year and that in 1995 we would start the fix. In November of that year, again the seepage made a tremendous jump and at that time, our experts said that thing will not stand up, and we made the decision to draw it down and not allow its fill in 1994.

The first time we took a look at fixing it, the cost for fixing the dam was about $60 million—$60 million. We took a look at that design and asked: "Is there a better way to do this?" And we considered several options that would reduce the price and still give us a safe facility there. And we did that. We went back to the people there and said no water next year for those lands, and yes, we set up a claim procedure and yes, there was a lot of confusion and

I apologize for that. I guess we can all do better with 20/20 hindsight.

We were proud of that facility because we built it under-budget and ahead of schedule, trying to help the districts there maintain the economy and be back in business with only one year out of service. Yes, we were patting ourself on the back up until May 17 when we got another jump in the pressure and the seepage from our monitors.

We do not know what is going on down there. I have been asked why can you not do it like Folsom Dam, in your part of the country. The failure at Folsom is standing right up there in front of you, you can see the gate hanging on the side of the dam, you can see the water coming out. This thing is down under 40 feet of water and 30 feet of fill material and we do not know what is going on down there.

On August 30, we found another sinkhole in there that we think is the problem. We think that when we over-excavated the material, there was a void there and it fell through and that is what we are going on. We will not know until we get it dug up. We are pulling the reservoir down now, we will allow it to dry out. Sometime around November 10, we will have an answer, we think we will have an answer on what we are going to do. But we do not know until we get down in there and find out what happened.

Now you asked me how much it has cost. I do not know yet because we are not done. The one question that was asked here, what happens when the Bureau leaves. We will not leave until we have a safe facility there. That is a guarantee.

Mr. COOLEY. OK, let me ask you one final question.

[Gavel.]

Mr. DOOLITTLE. All right, the next one is Mr. Pombo.

Mr. POMBO. Mr. Breese, in your prepared statement, you say that "However, if the farmer does not pay for non-delivered water, the Bureau, by law, has the right to take his property. But there is no law or provision for the converse—if the Bureau does not deliver, they do not owe the farmer a nickel." Is that true?

Mr. BREESE. That has been our case, Mr. Pombo.

Mr. POMBO. So if you do not get the water and you do not pay for it, they can foreclose on the ranch?

Mr. BREESE. If we cannot afford to pay for the water, we cannot use the water and then if we do not pay for the water long enough, then we do not make those proper payments, that is the way I understand the laws, that there is that provision.

Mr. POMBO. I have heard these referred to as water contracts, for the delivery of water. And I am not an attorney, but my understanding of a contract is that both sides have to perform. So if they do not deliver the water, how are they performing?

Mr. BREESE. I am not a lawyer also, but when we do not have water, we do not grow crops and when we do not grow crops, we do not have an income. But we do have operation and maintenance costs that we have to have that are ongoing costs, part of our fixed costs, on an annual basis. We do have a district, we have to maintain that district and if we do not contribute to that district, then we no longer can be delivered water in the future and that land may be reverted somewhere else.

Mr. POMBO. I guess we will have to ask the water attorneys to explain that one to me.

Are you familiar with—you are a farmer and you say that you irrigate part of your land, I assume with sprinklers?

Mr. BREESE. Yes.

Mr. POMBO. Is it the pivot type?

Mr. BREESE. On these particular acres, no, I do not have a pivot, I have some wheel-rolled sprinkler and some handset sprinklers. And in this part of the valley I also have some sub-irrigated meadows on the lower half of the place because of the water table rising in the valley itself.

Mr. POMBO. Is this one of the water districts where they had the problems with the waterspreading?

Mr. BREESE. Not that I am aware of.

Mr. POMBO. No? Are you familiar with the areas where they do have that problem?

Mr. BREESE. Yes, I am acquainted with the problem that exists around in this part of the country and also up in the state of Washington.

Mr. POMBO. Are you familiar with the irrigation practices in those districts?

Mr. BREESE. I have learned more today sitting here through the testimony than I probably knew before that, yes. But I do know that in most cases, any farmer is going to be going to a system of irrigation that he can get the most bang for his bucks, and that is with controlled water release, which is through sprinkler application.

Mr. POMBO. When you irrigate with a sprinkler system, whether it is your type or the pivot type that they have around here, is there an amount of runoff that occurs?

Mr. BREESE. Well, if you are taking care of your water, there is not any runoff, but if you do not change those pipes every 12 hours or 24 hours, depending on your conditions, why you could have standing water underneath those. But other than that; no, there is no runoff. It is on a delivery system that we have through the canal system. We are delivered water through the canals to our pumping sites. Any extra flow from that is returned back to the river.

Mr. POMBO. One of the complaints on this waterspreading issue—and I wanted someone who farmed in this area to answer this because I know in my areas, I have irrigated a lot of ground and one of the things that got me in the most trouble is when I did not change the water in time and we had runoff, and my dad would get a little excited about that. And I would assume that with your cost of delivering water in this area, with pumping water, that you have as little or no runoff as possible.

Mr. BREESE. I am a dad too and I get a little excited when the kids do not get the pipe changed. So yeah, I know what you are talking about there. Yes, you do everything you can to keep that water being used efficiently and not causing standing water.

Mr. POMBO. So when you are talking about a runoff, a return to the river of the runoff, you are——

Mr. BREESE. That is water that is bypassing, in my case, my particular system, it is just water that is delivered and if I am not

using that total amount of water, that water passes on by and is returned back to the stream flow.

Mr. POMBO. Mr. Chairman, I am almost out of time, but I would yield the balance of my time to Mr. Cooley, if he wants it.

Mr. COOLEY. Thank you very much, Mr. Pombo.

Back to you again, John. I hate to keep doing this to you, but let me ask you something. Is there any process that we have in your system that if you do not provide water to the agricultural community in 1996 through the Ochoco Dam, that there will be some kind of compensation for lack of income because of the inability of the Bureau to supply water?

Mr. KEYS. Mr. Chairman, Mr. Cooley, there is no way that we can do that. We used the system last year of tort claims because we had told them that there would be water—that was two years ago—we had told them there would be water in 1994. It is early in the season and we have not made such a promise this year. So there is nothing in our process or authorization that would allow us to do that.

Mr. COOLEY. Are you entertaining any kind of contingency program if the water is not available because it is not the irrigators' fault?

Mr. KEYS. Mr. Chairman, Mr. Cooley, the only way that we can do that is by deferring payments that are due the government. We did that before and we can do that again. That is the only way that I know of.

Mr. DOOLITTLE. Mr. Cremeans is recognized.

Mr. CREMEANS. Yes, thank you, Mr. Chairman.

You know, two themes I would like to echo before we conclude these hearings. Number one is that, you know, we are all concerned about the future of our country and leaving whatever we do to our children. I think all of us realize—those of us here assembled especially—that we are going to make it the rest of the way, we are at the age where we probably will survive. But I realize and I think you realize that some fundamental change must happen and it must occur, and no one here is saying it is going to be painless.

Having said that, I would like to thank my good friend, Congressman Cooley, for requesting these hearings here in Hermiston and you, Chairman Doolittle, for granting that request.

And with that, I yield back the balance of my time.

Mr. DOOLITTLE. Thank you. Ms. Chenoweth is recognized.

Ms. CHENOWETH. Thank you, Mr. Chairman.

Mr. Moore, you provided us with some very interesting estimated economic impact figures here on the dam, the total dollar loss. You used a multiplier of 2.5 on a $6,239,988 loss. That 2.5 multiplier, economic multiplier, included what?

Mr. MOORE. Oregon State University made that up and I believe that that 2.5 multiplier they used there is saying that the dollars that are generated through agriculture goes through 2.5 hands before it leaves the county.

Ms. CHENOWETH. OK. So this did not include the loss to the city or the county?

Mr. MOORE. No, it did not.

Ms. CHENOWETH. And it did not include lost revenue from property and income taxes?

Mr. MOORE. No, it did not.

Ms. CHENOWETH. OK. When this dam was constructed, it looks to me like, from the picture here, that it is a big block of cement, or is it earth filled and capped?

Mr. MOORE. It is earth filled and it has a rip-rap, or a big rock armor on it.

Ms. CHENOWETH. Over the entire face of the structure?

Mr. MOORE. Yes.

Ms. CHENOWETH. How deep is the base of that dam, of that structure?

Mr. MOORE. Well, it is about 125 feet high and 300 feet thick I think at the bottom.

Ms. CHENOWETH. Well, it is not going to move very far, is it? I mean, that seems like a whole heck of a lot of weight there.

Mr. MOORE. Well, with the hydraulic fill, the fine material was in the center and the courser material was on the outside and you get pressure on it, it could develop a hole right through the dam, especially alongside the tunnel.

Ms. CHENOWETH. And that is caused then by the hydraulic pressure from the pool behind? Does that aggravate it? Is that what is causing the breach?

Mr. MOORE. The water, yes, behind the dam there, the pressure on it could force a hole clear through it.

Ms. CHENOWETH. The geomembrane liner that did not work, how thick was that, 40 mill or—and what kind of liner was it? Somebody said fabric.

Mr. MOORE. They pushed the rip-rap and rocks and things off and they made a smooth surface and put down a textile, which is a fabric.

Ms. CHENOWETH. A synthetic, oil-based material?

Mr. MOORE. It was almost like a piece of felt.

Ms. CHENOWETH. Like a piece of felt.

Mr. MOORE. And then over the top of that, they put about two and a half feet of gravel and sand and then they put a piece of plastic, very thick.

Ms. CHENOWETH. Interesting. I was looking at your report and the dam was constructed in 1917 and you had 43 cubic feet per second seepage?

Mr. MOORE. That is right.

Ms. CHENOWETH. In 1917. In 1922, it went down to 28, 1947 it went down to 17 feet. Gosh, we get down here to 1951, it is 12 feet, 1954 it is six feet, 1981, it is three and a half feet seepage. In 1987, it is 1.9 foot seepage? What happened in 1990 that—how much did the seepage increase that would warrant this?

Mr. MOORE. I do not know how to explain that. It takes 450 gallons a minute to make a cubic foot per second.

Ms. CHENOWETH. Yes.

Mr. MOORE. And probably after 1990—1986, we had measuring devices that we could measure. Before we had it all running over one big weir and then we put individual seep over weir, so we could have a more accurate measurement.

21-090 O - 96 - 3

Ms. CHENOWETH. But my question is how much did the seepage increase from 1.9 in 1987 to warrant the kind of work that was being done by 1989 or 1990?

Mr. MOORE. I would say that the 1.9 cubic feet would amount to about 900 gallons minute. In 1989, it went to about 5400 gallons a minute.

Ms. CHENOWETH. So from 900 to 5400.

Mr. MOORE. Yes.

Ms. CHENOWETH. So you went up to about six or eight cubic feet per second?

Mr. MOORE. About 11.

Ms. CHENOWETH. About 11, well that is still about one-fourth of what it started out seeping.

Mr. MOORE. Right.

Ms. CHENOWETH. Let me just say one thing and I notice my time is almost up, Mr. Chairman.

But I just want to say there is a way. It is not through the Federal Tort Claims Act and it is not through deferred payments, but you know, this is a sizable claim, $31 million plus losses to the city and the counties and so forth. If the Bureau breaks a contractual agreement with you, you can go straight into the Claims Court in Washington, D.C. for a breach of contract claim and a taking claim. I would advise you to look into that, that is where our best claims and settlements are coming out of, that court, not the Federal district court, the Court of Claims. Ask your attorneys about it.

Mr. MOORE. Thank you.

Mr. DOOLITTLE. You are trying to get my time again, huh?

Mr. McCabe, you testified—well, in the form of a question, but you state "Why did over 50 percent of the cost of the fabric liner repair as well as the most recent work costing $25 million go to administration." What is the basis of that claim?

Mr. MCCABE. Sir, I may have misspoke. I am not sure it is $25 million, I think the exact figure is $21 million, something to that effect.

Mr. DOOLITTLE. What about the administrative percentage?

Mr. MR. MCCABE. My understanding is that about $7 million to $8 million went to the contractor and the rest went back to the Bureau of Reclamation.

Mr. DOOLITTLE. We have our Regional Director here. Mr. Keys, is that true, that 50 percent of that went to administration?

Mr. KEYS. Mr. Chairman, it is not just to administration, it is to the exploration of the dam site, the several times designing, trying to find a fix that would work for the conditions that were there, it was for the contract administration of building the dam. All of that is included in that, and for going into a site unknown, that is fairly reasonable.

Mr. DOOLITTLE. Is the U.S. Geological Survey or is anybody else involved in this besides the Bureau?

Mr. KEYS. Mr. Chairman, there are no other Federal agencies involved. We have worked closely with the state and we have had outside consultants, geotechnical consultants, reviewing designs and the construction as we were doing it.

Mr. DOOLITTLE. Have your experts raised the possibility that this dam may be inherently unsafe and cannot be made safe?

Mr. KEYS. Mr. Chairman, we have looked at that several times. The design that we had when we built it appeared to take care of those conditions. We will not know that until we dig into it this time.

Mr. DOOLITTLE. If the dam had to be replaced in some fashion, do you have any idea what the replacement cost would be?

Mr. KEYS. Mr. Chairman, I do not. The first thing we would have to do is find an adequate dam site.

Mr. DOOLITTLE. Do you have a timeframe to come to a conclusion about these matters?

Mr. KEYS. Mr. Chairman, as I said before, sometime around the middle of November, we will have completed the forensic investigation of the conditions that are there. We will have looked at designs to take care of those conditions and if we cannot find a design that will take care of it, then that decision could be made at that time.

Mr. DOOLITTLE. You said this was on hydraulic fill. What exactly does that refer to?

Mr. KEYS. Mr. Chairman, in the olden days, they did not have the compaction equipment or methods that we have these days, or the control of compaction. Basically what they would do is build a couple of little berms, fill it up with water and then start putting material in there. And that gave, in those days, the best compaction that you could have. It also gave you separation of materials, it left you with a structure that is subject to liquefaction under earthquake conditions, it left you with paths through there that can pipe. The question that you were asking, Ms. Chenoweth, is a piping question. And basically what happens is you get the first little stream through and then it just eats and gets bigger as it goes back, it is called piping. Those are the inherent problems with hydraulic fill.

Mr. DOOLITTLE. Are there any known faults near this dam?

Mr. KEYS. Mr. Chairman, there are faults in the area but not through the dam site.

Mr. DOOLITTLE. Well, I think that concludes my questions.

I would like to thank the members of this panel for their testimony and ask you to respond in writing to any further questions that we may have as members of the Committee, and we will hold the record open for you to respond on a timely basis.

I would like to thank again, Congressman Cooley and his staff, and the Subcommittee staff, and the citizens of this community, for assisting us in having this hearing. I think we have received some important information and we will be following up.

And with that, the members of the panel are excused and the Committee is adjourned.

[Whereupon, at 6:57 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

STATEMENT OF JOHN KEYS III

before the

HOUSE WATER AND POWER RESOURCES SUBCOMMITTEE

HERMISTON, OREGON

OCTOBER 4, 1995

Good afternoon. It is a pleasure to address this field hearing of the House Water and Power Resources Subcommittee on the vital topic of water. The Reclamation Act of 1902 established Reclamation as a purely western water resource agency, and laid a strong foundation for a successful state-federal partnership. Section 8 of the 1902 Act provides that the development and operation of Reclamation projects will be undertaken in compliance with state water law. Reclamation has acquired appropriative state water rights for operation of its projects. Reclamation's water rights include storage rights for the operation of project reservoirs.

Subsequent to the Reclamation Act of 1902 several western States enacted special water laws to avail themselves of the benefits of the federal Reclamation program. These changes and strong local support prompted Congress to authorize and appropriate funds for many Reclamation projects. Today, about 2.7 million acres in the Pacific Northwest receive project irrigation water in any given year, a little less than half of all acres irrigated in the Snake and Columbia River Basins below the Canadian border. Later Acts of Congress have modified Reclamation law both generally and specifically. Reclamation must also comply with general statutes like the National Environmental Policy Act and Endangered Species Act, the Northwest Power Act, as well as federal trust responsibilities to Indian tribes.

Reclamation projects have long been operated to meet a variety of needs, some of which were not contemplated at the time of original project construction. Reclamation is a water management agency, and continues to try for improvement in operation of projects to meet the needs of all water users. I would like to discuss our activities on the Umatilla River and those under the Endangered Species Act to protect listed salmon.

UMATILLA BASIN PROJECT

The Umatilla River Basin was initially developed by private irrigation interests. Later, Reclamation constructed McKay Dam for supplemental water supply. Once healthy salmon populations had been reduced to extinction many years ago, except for a small population of resident steelhead. Congress directed Reclamation to build the Umatilla Basin Project (UBP) in 1988 to mitigate losses to anadromous fish resources and continue water deliveries to the four Umatilla Project districts. The project was intended to provide water necessary to restore some of the fishery and partially fulfill the fishing rights reserved to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in the 1855 Treaty with the United States and to protect, mitigate and enhance fish and wildlife.

It became evident through the planning stages of UBP that the four Umatilla Basin districts had allowed for deliveries outside the district boundaries. Section 208 of the project authorizing act provides that the Secretary of the Interior *may* approve modifications to the boundaries of the irrigation districts to include lands irrigated as of October 1, 1988. Several concerned groups including the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and Water Watch of Oregon have voiced concern that the UBP project would serve additional lands outside the district boundaries to the detriment of fishery flows provided by the UBP.

Considerable efforts have been directed toward addressing the out of boundary irrigation. Earlier this season Reclamation completed interim one-year water delivery contracts with three of the four Umatilla Basin districts providing for delivery of water to the out of boundary lands for the 1995 irrigation season. We are working with the fourth District to resolve several complex issues unique to that District. The interim contracts provide for fishery mitigation in 1995 via a provision in the contracts whereby the Districts agree to provide a portion of their contract storage water for the anadromous fishery. Ongoing studies, funded partially by the Umatilla districts, will develop data necessary for NEPA compliance and ultimate resolution of the out of boundary irrigation concerns.

Associated with the 1995 Agreement with the Westland Irrigation District, three water rights were issued by the State of Oregon: a temporary water right for the out of boundary irrigation deliveries to the Westland Irrigation District; a water right permit to use Reclamation storage water from McKay Reservoir for fishery purposes; and an instream water right in the Umatilla River for fishery purposes. The fishery rights are essential to allow State watermaster protection of the fishery mitigation water down the Umatilla River.

After completion of the first phase of the UBP by 1992, and partial completion of the second phase in 1995, anadromous fish populations in the Umatilla Basin have responded dramatically, rising to several thousand adult salmon returning each year. The Umatilla Basin now ranks as a leading tributary of the Columbia River for increased salmonid returns. Bonneville Power Administration (BPA) provides pump power and other funding for the UBP. The Umatilla Basin has the capacity to provide for even greater adult fish returns in future years. Much credit is owed to the Umatilla Districts, the CTUIR, the State of Oregon, Oregon Department of Fish and Wildlife, BPA and Water Watch of Oregon for their joint willingness and cooperation in working to provide water for the fishery resource in the Umatilla Basin and yet finding a way to maintain irrigation deliveries.

ENDANGERED SPECIES ACT

Beginning in 1991, the Bureau of Reclamation has worked closely with the National Marine Fisheries Service (NMFS), the BPA, the U.S. Army Corps of Engineers (COE), the Northwest Power Planning Council (NPPC), the U.S. Fish and Wildlife Service (FWS) state, Native American, fishery, hydropower, and irrigation interests in trying to preserve salmon runs in the Pacific Northwest under the Endangered Species Act. Reclamation's salmon restoration efforts have been focused in the Fish and Wildlife Program of the NPPC and Biological Opinions of the NMFS, on operation of the Federal Columbia River Power

System (FCRPS). The current Biological Opinion of March 2, 1995 is the river passage piece of a broader Salmon recovery program consistent with NMFS draft salmon Recovery Plan that addresses harvest, hatchery operations, habitat, and river passage. The Biological Opinion addresses a host of issues for the agencies. Reclamation's responsibilities fall into three categories:

- Shifting of Grand Coulee and Hungry Horse reservoir releases to help meet flow targets.
- Providing 427,000 acre-feet of water per year for flow augmentation from the Snake River above Lower Granite Dam.
- Participating in studies, to better understand how river, reservoir, estuary, and ocean conditions affect salmon.

The following flow targets were established in the March 2, 1995 Biological Opinion:

	Snake River at Lower Granite		Columbia River at McNary	
Spring	4/10-6/20	85 - 100 kcfs	4/20-6/30	220 - 260 kcfs
Summer	6/21/-8/31	50 - 55 kcfs	7/1-8/31	200 kcfs

Meeting Columbia River flow targets will effect the operations of Grand Coulee (Washington) and Hungry Horse (Montana) Dams. Local recreation opportunities, fish and wildlife resources and power generation may be affected, but the release of water from Hungry Horse and Grand Coulee should not impact Reclamation's obligations to its contract holders. Irrigation is an authorized function of the Hungry Horse project, but no irrigation contracts have been executed. Consequently, power, flood control, and stream flow regulation have traditionally dictated Hungry Horse releases. The irrigation needs at Grand Coulee can easily be met from natural river flows, so the reservoir storage has been available for power and other purposes.

Potential drawdown of COE reservoirs is not expected to impact the operation of Reclamation projects. Reclamation defers to the COE, Bonneville, NMFS, and the NPPC to resolve these very challenging issues.

Flow augmentation water from the Snake River Basin above Lower Granite dam has been identified as desirable for salmon protection and recovery. Water has been released from Reclamation project reservoirs and the Idaho Power Company's Brownlee Reservoir every year since 1991.

In order to provide 427,000 acre-feet each year for flow augmentation, Reclamation projects will be stretched as much as possible while still meeting Reclamation's contractual obligations to contract holders. Additional water will still be needed, which Reclamation will purchase from willing sellers. NMFS Biological Opinion reflects this decision and

Reclamation's compliance with state water law by incorporating two important conditions with respect to the 427,000 acre-feet:

- Reclamation will acquire water from willing sellers
- Reclamation will provide water in accordance with state water law.

Idaho and Eastern Oregon water users are being contacted about the possibility to rent or purchase their water supplies. Reclamation has permanently acquired two blocks of reservoir storage from project reservoirs in Idaho totaling some 22,000 acre-feet. It has also rented water from Idaho irrigation spaceholders in four of the last five years.

Reclamation is proud of its heritage as a western water resource agency that has forged strong partnerships with states and local communities, and is committed to meeting fully the requirements of applicable laws, in partnership with project water users and other stakeholders.

It is always a pleasure to discuss Reclamation's activities. I would be pleased to respond to any questions you may have. Thank you very much.

Don Armstrong
Chairman
Hermiston 2000

October 4, 1995
Basin Project Issues Presentation
Subcommittee on Water and Power Resources

Chairman Doolittle, Members of the Committee,

My name is Don Armstrong, I am the Chairman of Hermiston 2000. Hermiston 2000 is a community group involved in the planning, social and economic issues which affect our community. We represent a broad cross section of Business and community leaders in our area. I would like to thank you for the opportunity to speak with you today on an issue of vital importance to our community.

The Umatilla Basin project was a visionary and cooperative solution to resolve conflicts over the use of water from the Umatilla River. The planning for this project began in 1981 as an exemplary cooperative effort between our irrigators, the Confederated Tribes of the Umatilla Indian Reservation, state and federal fisheries agencies, the Bureau of Reclamation and the citizens of this basin. Its purpose was to "resolve the need for Umatilla River fishery restoration without impairing the existing irrigation based agricultural economy" [PR/EIS Umatilla Basin Project]. We have fully supported and participated in the goals of the Basin Project which provided for balance of the economic and social needs associated with the use of the Umatilla river.

I am here today in support of irrigated agriculture because we recognize the vital role it plays in our community. There are those who consider agriculture as an unworthy and wasteful enterprise designed only to enrich a ruthless and uncaring corporate "Farmer". We have a different view. We believe that the ability to farm and the availability of arable land is a precious natural resource which must be protected and developed and which cannot be taken for granted. Once people realize that there is a scarce amount of farm land in the back room of their local supermarket -- they may more easily support the needs of the farmers here in the vast unknown, who provide the real source of the bounty which they taken for granted, as they shop for and consume their favorite brands of food. The success of this project, involvement in this project and the impacts of this project are shared by all of us -- as consumers or farmers.

The Basin Project as envisioned and developed through Federal Legislation and Public Law 100-557 has not been implemented as intended and has in fact become a real threat to the rights and the livelihoods of our irrigators. It is being used as tool to reduce the irrigated acreage in this area and to extort water from our irrigation districts.

Today, it is my hope that I will provide you a broader understanding of our participation in this project, its impact on our community and the concerns that have been raised.

As a community we supported the goal of restoring the fishery to the Umatilla river, and supported the Tribes efforts to maintain their cultural and social values through this project. There has been a great willingness to compromise to achieve these goals and our irrigators have given up available legally permitted water for these purposes. They have engaged in good faith negotiations and made numerous accommodations to further the goals of the project. They participated in this project because they believed that it was "for purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland and Stanfield irrigation districts, ..." [Public Law 100-557]. That promise and purpose has not been fulfilled for our irrigators .

There have been notable successes in the recovery of the fish runs and the fishery associated with the Umatilla River. The flows and quantity of water in the river are at historical highs. Management practices for flow and usage are achieving significant success. Unresolved is the assurance of continued water service to our Irrigation districts and the lands which were historically irrigated as of 10/1/1988 as promised in the Basin project.

As you are well aware the BOR Bounda ies are the contractual constraints which are used to insure the repayment for project development costs incurred by the Bureau -- in this case they are using the boundary issue in an attemp' to control water use by excluding land from service by BOR project facilities. As a result 17,000 of the 49,000 acres identified in the Basin project may be denied service in spite of valid permits for beneficial use of this water from the state .

This is an issue now characterized as "water spreading". A practice which was recognized in the planning of the Basin Project and around which a significant part of the solution for the project was developed. Any definition of "Water Spreading" must acknowledge that this practice is not the use of additional water but a expanded use of the same water. It is a benefit of conservation and technology applied to water application, resulting in greater beneficial use of this resource. The Basin Project identified the quantity of water received and used by the Districts including water used on out of boundary lands. This conserved water is an integral part of the Basin Project exchange.

The boundary changes do not impact the project operations or the exchange amounts around which the Basin Project was designed. The project depends on the quantity of water used by the irrigation districts on the out of boundary lands for exchange purposes. Without this exchange the entire Basin Project operation is jeopardized.

Suggestions that the Irrigation districts would increase the amount of water taken from the Basin project as a result of boundary changes are false.

In fact -- the districts have provided additional water, beyond the amounts originally envisioned in the project.

In fact -- the actual water usage by the districts from the Umatilla river has decreased in the past 10 years.

In fact -- technology and management practices have resulted in more in stream water and more productive land.

Let me emphasize that whatever the Bureau's concerns regarding "water spreading" are in this basin, the Umatilla Basin Project was the solution crafted to resolve this perceived "problem" . It was fully expected and intended that the Basin Project was to provide the mitigation which would resolved this issue in our Basin. This resolution was a significant motivation for concessions by the irrigation districts in the project development negotiations.

We need your help in rejecting the requirement for a new EIS for the Bureau of Reclamations boundary expansion process. A process, quite frankly, which we believe is being used as a weapon to confiscate legally permitted and beneficially used water, and to serve as a smoke screen for a history of negligent BOR practices and broken promises to our irrigation community. A process which is time consuming and expensive to answer a problem which has already been reviewed and a solution which has been 15 years in the implementation process.

The Basin Project included a full EIS which addressed the water usage issues in the Basin, including out of boundary lands. Presumably a new EIS would address the impact of water application to those land. In which case the review would be purely revisionist since the impacts of water deliveries outside the BOR boundaries have occurred and have been occurring in some cases for over 40 years with the full knowledge and concurrence of the Bureau. These impacts are clearly visible -- in the form of some of the most efficiently irrigated, effectively managed, productive farm land in this country. I urge your support for passage of HB 2392 which has been introduced by Representative Cooley. This bill will swiftly and certainly resolve this issue and assure the success of the Basin Project. And it will allow the opportunity for additional efforts to move forward to enhance and expand the project.

The threat to our irrigators, our economy and our social structure is the loss of thousands of acres of productive irrigated land outside of the BOR district boundaries. Land which has permits for the beneficial use of water. Land which was included in the acres identified as integral to the basin project. Water which was identified and is critical to the exchange necessary for the success of the Basin project.

We support the Tribal desire to protect their cultural, social and economic values. We ask that our cultural, social and economic values be given the same support. We have contributed in many ways to the betterment and well-being of our society and our environment through improved management of our natural resources. What was once sage and sand now blooms and provides nourishment and employment for thousands of people. We recognize the natural competition between our economic needs and our social values and the necessity for balancing these needs. At the same time we hope that the Tribes recognize that in pursuit of their own economic and social interests that they also compromise to balance these needs. And where they impact our community that they ask us to compromise. The development of the Tribal Casino provides a salient example of the social and environmental impacts which must be balanced as we all work toward solutions which serve the vital economic needs of our communities.

Our community has made a commitment through support of the Basin Project and a further expansion to find solutions and compromise which support and enhance the cultural and economic goals of both of our communities. While our irrigators have gotten far less benefit than they expected from the project there is a continuing desire to improve on the success and the vision of the Basin project. As good stewards of our natural resources we all benefit when we can make maximum use and have minimum impact on our environment. Time, technology and experience have provided additional options which can enhance and expand this project. It is time to move forward.

With your help we can continue in a positive and productive way to maximize the success of this collaborative effort as we seek local solutions and work together to solve problems.

Our Irrigators, our community, and the fishery in the Umatilla River need your help to insure the success of the Basin Project.

Thank you for your time and for allowing me to speak to you regarding this important issue for our community. I hope that I have communicated clearly the deep concern and commitment of all of the members of this community with this project. We are a community with a clear sense and connection with our "Agri -culture" and our "Agri - economy" it is our past and our future.

THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

100 Justice Building
1162 Court Street NE
Salem, Oregon 97310
FAX: (503) 378-3802
TDD: (503) 378-5938
Telephone: (503) 378-6986

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: October 4, 1995

TO: U.S. House of Representatives
Subcommittee on Water and Power Resources

FROM: Stephen E.A. Sanders
Assistant Attorney General
Oregon Department of Justice

SUBJECT: Federal Government Actions Affecting Oregonian's Water Rights

At the risk of repeating the obvious, I believe it is important to recall what a water right is. A water right, under the prior appropriation doctrine, is the right, in times of shortage, to require all persons with junior priority dates to cease using water until all uses with senior priority dates on the same source of water have been satisfied. The rule in its simplest expression is: "First in time, first in right." Because the value of a water right is primarily based on its priority date relative to other users of the same source, all users must be subject to, and play by essentially the same rules. As the United States Supreme Court noted in its analysis of Oregon's adjudication system in 1916, in the area of water rights, every person's water rights are inextricably intertwined with every other person's water rights on the same source. Consequently, the effectiveness of a water rights system necessarily requires that all persons claiming water rights are subject to the same system. While the citizens of the state, state and federal agencies and Indian tribes and irrigation districts all have vital interests in water rights, there is only one system in which the relative rights of these diverse interests can be managed: That is the state's system, exercised through the authority of the Oregon Water Resources Department and Commission. There is no comparable federal or tribal system with authority over all users on a source.

Until all water rights have been evaluated against all other claimants on a source, typically done through an adjudication of relative rights, the state cannot regulate either in favor of or against those rights. In other words, a person who holds an unadjudicated right will not be shut off in favor of one who claims to hold a senior right, nor will the state shut off one who would appear to hold a junior right in favor of the unadjudicated right. That is because until rights have been established in a system that allows for scrutiny of the claim and a legal determination of the claim's nature and scope, there is no legally conclusive evidence of where the right fits in the priority scheme. This is particularly troubling for

those who hold the oldest rights on a system, if they have not been adjudicated yet, since ultimately those rights are entitled to shut off all rights established subsequent to the unadjudicated right. By and large, many of the very oldest rights are held by the tribes and federal agencies. Some tribes hold "time immemorial" rights to water for fishing purposes. Federal agencies hold priority dates based on the date the land was set aside from the public domain for some specialized purpose, like a national forest, a national park or an Indian reservation.

It is particularly troubling (and especially short sighted) then that federal agencies consistently try to block the adjudication of their reserved and other rights by the states.. In Oregon, we have spent since 1975 trying to establish the state's authority to adjudicate the federal and tribal claims in the Klamath Basin. The case is still pending before the United States Supreme Court on a request by the Klamath Tribe to have the Court review a Ninth Circuit Court of Appeals opinion that determined Oregon could adjudicate those rights. We were particularly pleased to see that the United States has now agreed that the Court should not review the case, but has recognized that their are adequate safeguards to protect federal and tribal interests determined in the adjudication. Aside from the time that could have been spent actually adjudicating these federal and private rights in the Klamath Basin, the state has spent hundreds of thousands of dollars in legal fees to establish the state's jurisdiction. We got off cheap. In Wyoming, I understand the state spent at least 12 million dollars to establish the same point. In no state that I know of has the United States ever willingly participated in a state adjudication. In no state that I know of has the United States ever prevailed in its argument that it need not participate. Nevertheless, the United States' continuing effort to assert extremely technical arguments to prevent the states from adjudicating has wasted millions of dollars and decades of effort that could have actually adjudicated the rights by now.

With respect to water rights held by, or developed with the help of, the Bureau of Reclamation, the state has historically worked with the Bureau and its patron districts and individual users to insure compliance with state water law, as required by the Reclamation Act of 1902. Often, state granted water rights have included conditions that require compliance with contracts between the Bureau and districts, as a condition of exercise of their state water right. In other cases, however, the Bureau seems to have authorized or encouraged water use within the districts in contravention to state water right restrictions. Much remains to be done to continue our recent efforts to coordinate the partnership between the state and Bureau to ensure compliance with both state and federal law.

We appreciate that the United States must balance many interests as it develops, asserts and defends water rights. The United States owes a trust responsibility to the Tribes to defend tribal reserved rights for fishery protection, irrigation and other treaty purposes. It must comply with NEPA, ESA and Clean Water Act concerns. It must carry out its

mission, established in the Reclamation Act, to reclaim the arid west through irrigation projects. The state has been balancing these same goals for decades, and have successfully adjudicated nearly three-quarters of the state. Unfortunately, only two of those adjudications have quantified federal and tribal reserved rights: Here in the Umatilla Basin and in the Lost River Basin, because until Congress' enactment of the McCarran Amendment (43 USC § 666) which waived federal and tribal sovereignty, the state could adjudicate only if the United States requested an adjudication. We have repeatedly indicated our willingness to help the United States comply with the state system. If the United States is not going to help us in this effort by participating in this already established system, at least they should get out of the way.

We would also ask that the United States carry its share of the load with respect to the expenses the states incur to conduct these complicated and time consuming proceedings. Until a recent United States Supreme Court case that arose in Idaho, the United States had been required to pay filing fees like all other claimants. Those fees are based on how much water a person claims, so that these expenses are fairly apportioned among the claimants. Many states like Oregon face budget shortfalls, and consequently are looking to those who primarily benefit from a service the government provides to help pay for the service. In most cases, the United States will be the principal beneficiary of adjudications which are likely to establish large, old federal claims to water. As a matter of fairness, the United States should once again be required to pay these filing fees.

We are also concerned that once rights have been adjudicated, the Untied States will assert that it need not comply with the orders of state watermasters when they regulate between users of a source because of a potential technical argument that a watermaster order is not a traditional "law suit". To avert the possibility of such a time-consuming and short sighted argument, we would also ask that the McCarran Amendment be amended to reflect the history of court decisions interpreting the amendment instructing that it should be interpreted to accomplish its purpose rather than technically. We have prepared language that would accomplish these goals for your consideration.

tjh/SEA0176.MEM

Proposed Amendment, Annotated:

43 U.S.C. § 666 **Suits for the adjudication of water rights** (McCarran Amendment)

(a) Joinder of United States[~~ as defendant~~][1]**; costs.** Consent is hereby given to join the United States [~~as a defendant~~] in any suit <u>or any administrative proceeding initiated by a State</u>[2] (1) for the adjudication of rights to the use of water of a river system of other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation, by exchange,, or otherwise and the United States is a necessary party to such suit <u>or proceeding</u>.[3] The United States, when a party to any such suit <u>or proceeding</u>, shall (1) be deemed to have waived its right to plead that the State laws are inapplicable, <u>including those laws requiring the payment of filing fees to the same extent as a private individual under like circumstances,</u>[4] or that the United States is not amendable

---

[1] Removing the word "defendant" here, and in the first sentence of the text, clarifies that the United States is to participate in more than just traditional lawsuits. Water rights adjudications don't have "plaintiffs" and "defendants," they have a large number of "claimants" and an adjudicator, usually a state agency, court, or combination of agency and court.

[2] The purpose is to clarify that administrative proceedings, by which a number of states adjudicate water rights either wholly or partially, are permissible proceedings in which the United States is required to participate. In addition, it would clarify that the United States is subject to state "administration" of water rights, which virtually all states do outside the traditional court "lawsuit" setting through the offices of a watermaster, an administrative official. The watermaster's actions are always subject to judicial review, so the United States would not be at the unfettered mercy of some administrative official whose actions could not be reversed by a court, if wrong.

[3] To clarify throughout the statute (here, and the three other places where this term is used) that the United States is subject to both suits and proceedings of a less formalistic nature.

[4] The purpose here is to require the United States' payment of filing fees like all other water rights claimants, but to keep states from adopting fees that would discriminate against the United States. The phrase "to the same extent as a private individual under like circumstances" parallels the language later in the sentence which grants the United States appeal rights equal to other claimants.

thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders and decrees of the court **or agency**[5] having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit **or proceeding**.

(b) Service of Summons. Summons of other process in any such suit **or proceeding** shall be served upon the Attorney General or his designated representative.

(c) Joinder in suits involving use of interstate streams by State. Nothing in this Act shall be construed as authorizing the joinder of the United States in any suit or controversy in the Supreme Court of the United States involving the right of States to the use of the water of any interstate stream.

KEY:

(Bold and underlined material proposed for addition.)
[~~Bracketed and strikeout material proposed for deletion.~~]

---

[5] Particularly with respect to administration of water rights, the "judgments, orders and decrees" that the state uses to shut off junior users in favor of senior users are issued by an agency, (subject to court review) rather than a court in the first instance.

Testimony of Steve Eldrige
General Manager
Umatilla Electric Cooperative

Before The
House Subcommittee on Water and Power Resources
Hermiston, Oregon

October 4, 1994

Pursuit of a John Day Pool Drawdown on the Columbia River, A Misguided Federal Agency Action for Salmon Recovery Planning

The Umatilla Electric Cooperative serves irrigation customers and communities in Eastern Oregon that rely on the John Day Pool as the backbone of our economic well being. Including our neighboring farmers and service utilities in Washington, the John Day Project irrigates about 170,000 acres, representing an annual gross farm-gate value of about $315,000,000.

As a result of Snake River salmon recovery planning under the Endangered Species Act, a proposal has been made by the National Marine Fisheries Service (NMFS) to lower the John Day Pool from its current operating level (elevation 262.5-263.5 ft.) to minimum operating pool (elevation 257 ft.). This action is suggested by NMFS to improve salmon survival through the Pool. In December 1994, the drawdown proposal received further support from the Northwest Power Planning Council, but the Council has been since forced to re-examine the scientific integrity of its Fish and Wildlife Program.

We believe that several important issues surrounding the efficacy of the John Day Pool drawdown proposal are being deliberately ignored by NMFS. We believe that this issue embodies many of the key problems surrounding salmon recovery planning efforts by NMFS in the Columbia Basin, as well as inherent flaws to the existing Endangered Species Act.

Bonneville Power Administration and Salmon Recovery Planning:

With the proposed ESA listings for Atlantic Salmon, we are now hearing concerns from Maine Governor King that the economic costs of listing and recovery actions will not be acceptable. Governor King cites economic impacts to the forest products industry, recreational fishing, and aqua-culture operations.

In the Pacific Northwest the economic costs for recovery measures are, and would be, much greater given actions related to hydroelectric project mitigation. But unlike the situation with Atlantic salmon, there exists the perception by NMFS that in the Pacific Northwest a giant "cash cow" exists--the Bonneville Power Administration--and it can be tapped to fund a myriad of planning and implementation activities. For NMFS, the cash potential seems endless, and it can be exploited all in the righteous pursuit of salmon protection.

Because NMFS is intoxicated by Bonneville's cash flow, meaningless actions are being proposed for salmon recovery, regardless of the actual funding source, including a drawdown of the John Day Project.

What Are the Economic Impacts:

The Army Corps of Engineers estimates that a John Day Pool drawdown would require construction and mitigation funding of about $175 million *(assuming that mitigation funding would be appropriated by Congress)*, with an additional $5 million-plus each year for power impacts. This funding would be used primarily to cover the costs for modifying irrigation, municipal, and fish hatchery pump stations, attempting to mitigate the losses affecting the Umatilla Wildlife Refuge, and attempting to mitigate impacts to several recreation facilities.

Even with mitigation funding, the area will experience additional direct and secondary economic costs. Irrigation electric power costs will increase with greater water lifts, recreational expenditures associated with the Wildlife Refuge, flat-water recreation, and resident sport fisheries will be reduced, and the quality-of-life of the area will be diminished, making economic development efforts more difficult.

I should not have to stress the obvious fact that any action that disrupted irrigation activity in the area would create tens-to-hundreds of millions of dollars worth of economic loss.

Technical Review of the Drawdown:

So, if the economic costs are substantial, then the drawdown must be a "good" recovery measure, right? No, this is not the case. Many of the region's credible scientists and technical analysts have rejected the John Day Pool drawdown proposal. This includes the independent Snake River Salmon Recovery Team, Corps of Engineers researchers and consultants, The Harza Northwest consulting group to the Northwest Power Planning Council, University of Washington researchers, and several private consultants.

These research groups have rejected the John Day drawdown proposal because: 1) it will yield no measurable benefits for either Snake River or Columbia River salmon; 2) it may actually cause negative salmon impacts through loss of rearing areas and increased predation; 3) it will definitely lead to severe environmental impacts to the Umatilla Wildlife Refuge; and 4) it is not a cost-effective use of recovery plan funding.

A Science-Based Recovery Plan:

A science-based recovery plan would acknowledge that high rates of juvenile salmon mortality exist both prior to entering the hydroelectric power system and within the ocean environment; and that juvenile salmon survival rates through the hydro system have been greatly improved by use of the smolt transportation system and improved project operations.

- NMFS and other evaluations suggest mortality rates between the rearing/hatchery grounds and the Lower Granite Reservoir ranging from 30-40%.

- Ocean mortality estimates by NMFS, UW, and others suggest mortality rates between 80-95%.

- The Corps "Inter-Basin Study" depicts how poor ocean conditions have dramatically reduced chinook salmon runs along the Pacific Coast, within the recent past.

- University of Washington researchers estimate that Snake River juvenile salmon survival through the hydro power system, at the present time, ranges between 53-64% depending on water conditions.

A science-based recovery plan would focus on the marginal benefits and costs of proposed salmon recovery measures, as displayed in the attached figure and table. This figure illustrates that: 1) the ability to make significant increases to juvenile salmon (smolt) survival through the hydro system is very limited; 2) measures that directly or indirectly enhance salmon survival are actions to improve the smolt transportation program; and 3) reservoir drawdown measures will not improve juvenile salmon survival.

A science based recovery plan would totally reject the John Day Pool drawdown proposal.

The NMFS-ESA Issues and Problems:

It is suggested to the Committee to acknowledge fully the key issues and problems raised here:

- Because the Bonneville Power Administration is viewed as a "bottomless purse" for funding, extremely poor actions for salmon recovery--like a John Day Pool drawdown--are being pursued by NMFS.

- A John Day Pool drawdown would incur both high economic and environmental costs.

- A John Day Pool drawdown will not produce any measurable improvements to Snake-Columbia River salmon survival.

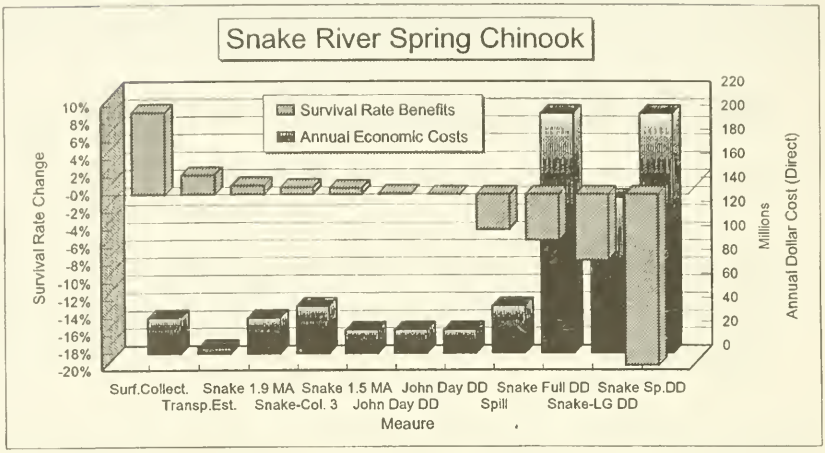
- NMFS ignores the fact that only relatively small improvements can be made to juvenile salmon survival through hydro system measures.

- The NMFS Proposed Recovery Plan ignores the marginal benefits and costs of proposed actions.

- NMFS currently operates under the "protection" of flawed ESA legislation, not recognizing biological or economic cost-effectiveness.

Given the above, the need for reform to both Columbia Basin salmon recovery planning and the Endangered Species Act should be apparent.

Marginal Benefit/Cost Assessment For Key Snake River Salmon Recovery Measures



Survival rate benefit estimates based on UW CRiSP 1.5 Model series; economic costs based on BPA and Corps estimates; final cost estimates in review.

Source: Olsen, D. and J. Anderson, "Profiles in Cost-Effectiveness," 1995 (in publication review).

Snake River Salmon Survival Rate Improvement--Downriver Migration

Measure	Percent Survival	Change From Base Case Conditions	Est. Direct Annual Cost
Base Case-Pre-ESA Conditions, Low Water (3.5 MAF Columbia, Snake R. Transport)	52.5%	------	
Surface Collectors LG,LG (80% Collection)	61.8%	9.3%	$30,000,000
Transport to Estuary	54.7%	2.2%	$5,000,000
Flow Snake 1.9 MAF	53.5%	1.0%	$30,000,000
Flow Snake-Columbia 3 MAF	53.3%	0.8%	$40,000,000
Flow Snake R. 1.5 MAF	53.2%	0.7%	$20,000,000
John Day Pool DD (Columbia Fish)*	52.6%	0.1%	$20,000,000
John Day Pool DD (Snake Fish)	52.5%	0.0%	$20,000,000
Spill at All Projects	48.5%	-4.0%	$40,000,000
Snake Full DD	47.3%	-5.2%	$200,000,000+
Snake-Lower Granite 710' DD	45.0%	-7.5%	$130,000,000
Snake Spillway Crest DD	33.0%	-19.5%	$200,000,000+

* Actual model change from Priest Rapids Dam to estuary 50.8% versus 50.9% survival.

OREGON WHEAT

October 2, 1995

John T. Doolittle, Chairman
Subcommittee on Water and Power Resources
U.S. House of Representatives
Committee on Resources
Washington DC 20515

Statement of Joyce Hart
Oregon Wheat Growers League Transportation Chair
Before the Subcommittee on Water and Power Resources

Chairman Doolittle, Committee Members, and Staff:

Mr. Chairman and members of the subcommittee, it is a pleasure to appear before you today to discuss the important issue of salmon restoration on the Columbia River system as it affects wheat producers in the Northwest..

To put this issue in perspective, I would first like to inform the subcommittee on how wheat is produced and marketed here in the Northwest. After the summer harvest, wheat is stored either on-farm or at the local country elevator. Wheat growers have the option of selling immediately or waiting for better prices. In the Midwest, wheat producers have the option of hedging on the major exchanges. Here in the Northwest, that option is not as viable, as the basis for soft white wheat is not as applicable as it is for the major Midwest futures markets. Therefore, it is critical that growers in this region have the opportunity to market wheat at any time, year around.

The major type of wheat produced in the Northwest is soft white, of which about 90 percent is exported annually through lower Columbia River grain export terminals. Our major customers are in Asia and the Middle East. Soft white wheat is used for a number of end products, including cakes, pastries, biscuits, and flat breads.

However, it is important to understand the soft white wheat is only a portion of the wheat export story. Hard red winter and spring wheat from Montana, Colorado, and the Dakotas is transported in increasing volumes by unit car trains to lower Columbia River terminals for export. Currently, over 60 percent of the annual total wheat volume arriving at lower Columbia River export terminals is red wheat, which is used for mainly bread products in those countries and regions previously mentioned. Durum wheat from North Dakota also arrives by rail, which is used by

OREGON WHEAT GROWERS LEAGUE • P.O. BOX 400 • PENDLETON, OR 97801
PHONE (503) 276-7330 • FACSIMILE (503) 276-1723

importing nations for pasta products.

The lower Columbia River system has built a reputation on providing the highest quality of wheat for world export. This area is the only place in the world where a customer can source and load virtually any type or class of wheat available. In fact, it has become routine for a vessel to be loaded with many classes of wheat on the same vessel. It has also become routine for different protein levels of the same class to be loaded on the same vessel. As an example, one of our major customers, South Korea, routinely loads five different types of wheat on their vessels.

Wheat is only part of the story, however. Corn has become a major export item, also. Cong-Agra Peavy, located at the Port of Kalama, loads almost exclusively corn for export, which arrives by rail from mainly Nebraska. Export terminals also routinely load barley, beet pulp pellets, and occasionally sorghum. In 1994, 18 million metric tons of grain were loaded by export terminals in the lower Columbia River.

It is also important to understand how the export wheat marketing system operates in this region. Many of the customers are in this market weekly or monthly to source their needs. Japan, as an example, is in this market almost every week to source supplies that will arrive in Japan three months hence. The key to this success is the fact that we are a reliable, consistent supplier of high quality wheat and other grains.

Export terminals in the lower Columbia River system are essentially "through put" operations, meaning that they do not and cannot store grain for long periods of time. Grain arrives daily, either by rail, barge, or truck, is binned according to quality and class, and is loaded on an export vessel almost immediately. The system is highly efficient, mostly automated, and reliable. That is what our customers have come to expect.

I would like to turn a moment to wheat transportation in this region, which is the main reason I wanted to speak with you today. Almost all of the soft white wheat that is produced in the Pacific Northwest is shipped to the lower Columbia River by barge. The only real exception to that is wheat produced in the Willamette Valley, which is trucked. Occasionally a unit rail car train is loaded with soft white; however, that is generally not the preferred method of transportation, due to the cost competitiveness of barge transportation.

Let's focus a few minutes on some of the proposals that have come forth the allegedly assist in the effort to protect and enhance salmon in the Columbia/Snake River system. Lowering the John Day pool to spillway crest for 4.5 months would mean a closure of barge transportation for six to seven months, as an example. Lowering that same pool for two months would mean a closure of the system for at least four months.

Supporters of these ideas would simply say that wheat could be trucked or railed while the river system is inoperative. What proponents fail to understand is that the rail system is already fully utilized, both in sense of volumes of wheat and corn moving through the Columbia Gorge, as well as in the number of rail cars that are available to transport grain. Others might suggest that wheat be trucked to Biggs, which is below the John Day dam, and be put on barges there. Under the most conservative of scenarios, this would require the equivalent of six barges to handle the volume on a daily basis. That would mean 702 trucks, or two 102-car unit trains. This translates to an additional transportation cost of 30- 40 cents per bushel ($28,000 per day!) which must be borne by upriver producers. I have little faith that the public would greet with great enthusiasm the addition of thousands of additional trucks on I-84, even if they were available.

The cost to wheat producers for transportation would skyrocket if the river system were shut down for long periods of time. Barge transportation is not only a cost-effective way to move products to market, it is also environmentally friendly when compared to the addition of thousands of trucks spewing pollution into our air.

In short, Mr. Chairman and members of the Subcommittee, there are no easy answers to salmon restoration. Most importantly, all parties to this debate must understand fully the implications of drawing down reservoirs and the effect those proposals will have on the most efficient, high-quality wheat and grain exporting system in the world -- the lower Columbia River system.

Wheat producers in Oregon and the Northwest started working on the development of export markets in the 1950's and have not stopped since that time. We are looking, as an example, at the development of a new class of wheat -- hard white -- which will, we hope, gain back market share that we lost to the Australians. This new wheat, when released, will add to our already impressive list of high quality wheat available for our customers and potential customers.

In conclusion, Mr. Chairman, my message today is that rational thought must prevail in this debate over the future of the Columbia/Snake River system.

I appreciate the opportunity to appear today, and would be glad to answer any questions you may have.

Sincerely,

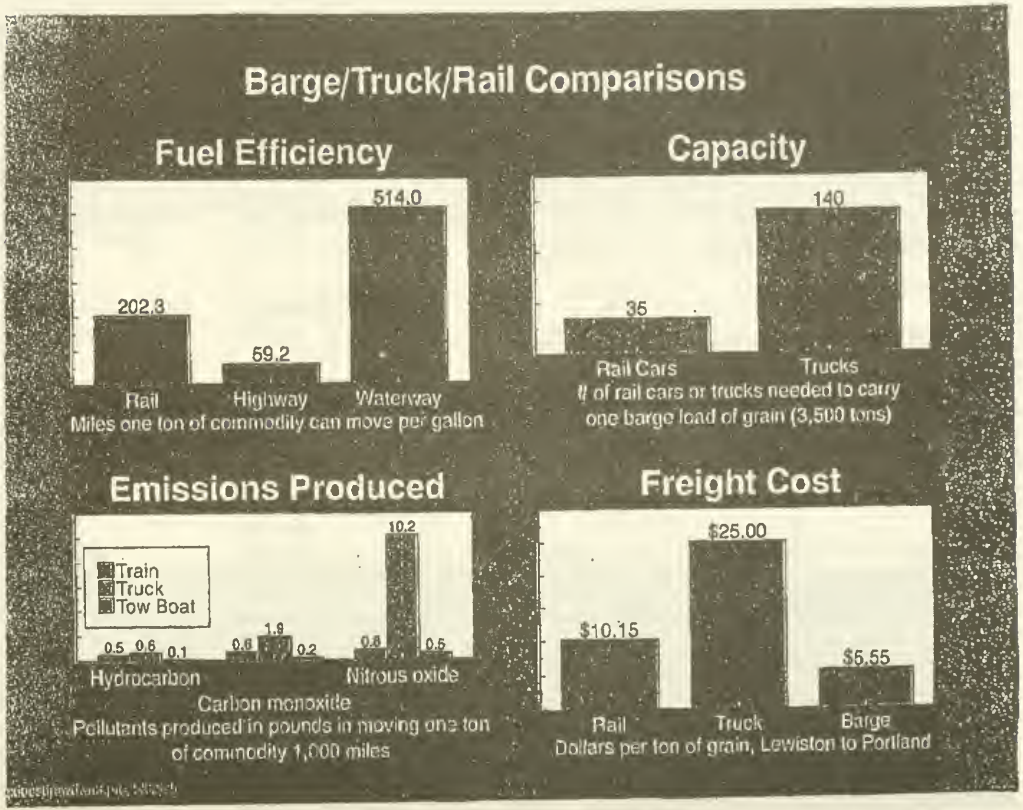
Joyce A Hart
Chair, Transportation Committee
Oregon Wheat Growers League

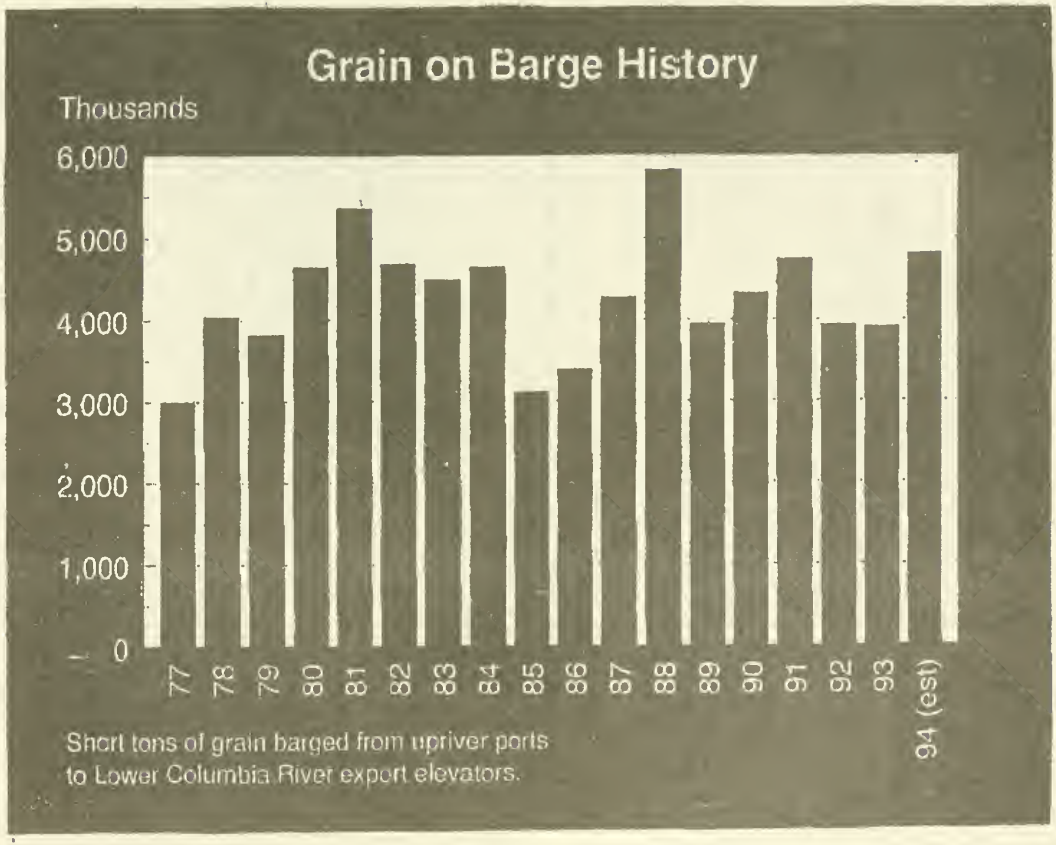
Proposed Drawdown Alternatives

Pool	Drawdown Action	Time Period	Impact to Barge Navigation
John Day	To M.O.P.	All Year	Increased lockage time Port access (Boardman)
	To spillway crest	All Year	Year round closure
	To spillway crest	4.5 months	6 to 7 month closure
Snake River	To M.O.P.	5 months	None
	To natural river	All year	Year round closure
	To natural river	4.5 months	7 to 10 month closure
	To spillway crest	4.5 months	5 to 6 month closure
	To spillway crest	2 months	4 to 5 month closure

Columbia/Snake River Barge Traffic

Category	Commodity	Total Barge Tonnage	To/From Snake River	Snake River Share
Grain	Wheat Barley	3,900,000	2,500,000	64%
Containers	Paper Hay Frzn Potatoes Peas & beans	250,000 12,600 ctnrs	115,000 5,700 ctnrs	46%
Other Downbound	Logs Woodchips	800,000	760,000	95%
Upbound Commodities	Petrol./ Fuel Fertilizer	1,200,000	800,000	67%


Barge/Truck/Rail Comparisons
Fuel Efficiency
202.3
59.2
514.0
Rail
Highway
Waterway
Miles one ton of commodity can move per gallon
Capacity
35
140
Rail Cars
Trucks
# of rail cars or trucks needed to carry one barge load of grain (3,500 tons)
Emissions Produced
Train
Truck
Tow Boat
0.5
0.6
0.1
0.6
1.8
0.2
0.8
10.2
0.5
Hydrocarbon
Carbon monoxide
Nitrous oxide
Pollutants produced in pounds in moving one ton of commodity 1,000 miles
Freight Cost
$10.15
$25.00
$5.55
Rail
Truck
Barge
Dollars per ton of grain, Lewiston to Portland


Grain on Barge History
Thousands
6,000
5,000
4,000
3,000
2,000
1,000
0
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94 (est)
Short tons of grain barged from upriver ports
to Lower Columbia River export elevators.

Oregon Grains Commission

Programs of research, promotion and education
for Oregon's barley, triticale and rye grains

October 2, 1995

John T. Doolittle, Chairman,
Subcommittee on Water and Power Resources
U.S. House of Representatives Committee on Resources
Washington DC 20515

Chairman Doolittle, Committee Members and Staff.

Please accept my comments on the effect of the Lower Snake/Columbia River Reservoir Drawdown on the cost of Wheat Production and Shipping Costs, as well as potential economic impacts to rural communities.

Comments on: Barge Transportation

A drawdown of any length is in total disregard for the complex nature of grain export markets. Many of our customers have storage for only a twenty-day supply of wheat and must receive delivery in a timely manner. Several classes of wheat from different regions in the U.S. are purchased by our customers and shipped on combined cargoes. If different classes of wheat are not available when needed, the export market will be lost to our competitors. As our foreign customers advance to a higher standard of living, their desire for different classes of wheat to meet milling standards for end use changes. Eating habits change. Workers may want bread, noodles, cakes and/or flat breads. Each require wheat grown in different areas of the Northwest. These classes are brought together at downriver ports and loaded as combined cargo for delivery at several mills in one port or ports in a foreign nation.

The Northwest region depends on exports for 90% of sales. Customers such as Japan come on a regular basis and must be serviced weekly to meet the demands of the mills in their country. Customers such as Egypt, Bangladesh, and Pakistan come to the PNW on an infrequent basis but for large quantities.

PO Box 1086 202 SE Dorion Ave Pendleton Oregon 97801-1086
Telephone (503)276-4609 TDD (503)986-4762 FAX (503)276-5753 or 276-1723

Grain from the John Day Pool and above accounts for 80 to 90% of barged grain shipments received in Portland. Of wheat and barley received in Portland, 40% is shipped by barge. The Lower Snake River shipments of wheat are very significant. Hard Red Winter and Hard Red Spring combines with Soft White in combination cargoes. It originates in Montana and is shipped by truck to Lewiston and barged to Portland.

Assuming only an April, May, and June drawdown, the grain industry would have to truck grain in winter months to arrive in Lewiston prior to a drawdown in April. Winter trucking is more costly as load limits are often imposed and adverse weather causes dangerous road conditions. Furthermore, rural roads are not all-weather roads, and are often not usable during inclement weather, The window of time for shipping to Lewiston would be prior to December and in March. This would prevent growers and their co-ops from meeting down river delivery contracts in Portland.

The grower, in any event, must pay the increased shipping costs. If the market price is not strong enough to make economic sense to sell, sales from country elevator origins will not occur.

If barge traffic is concentrated on fewer loading points, the volume serviced might be less than normal. If more than the usual number of rail cars are needed in the Pacific Northwest during the April-July period, the region will be in competition for grain hopper cars during the wheat harvest in the Midwest, from the Gulf States up to the Northern Tier. Reducing the marketing year by two to three months will have an adverse impact on the price of wheat, even if markets were not lost as they most certainly would be.

There is no alternative to truck barge shipment of wheat. For example, in 1991 at the Mission unit train facility east of Pendleton, rail cars were not available to ship more than half of the wheat they had contracted for in Portland. This added cost for shipment by truck, and penalties were charged for failure to deliver on time.

If the John Day Pool were to go to spill way level, 90% of the grain barged on the river to Portland would have to move by truck to The Dalles Pool. The cost to growers in the Pendleton area who would transport their grain by truck to Biggs to off load onto barge would be an estimated 20 cents. An additional handling charge of 10 cents at Biggs would bring total <u>additional</u> costs per bushel for transportation to 30 cents. With margins

periods of drawdown. The capability of downriver storage is limited so it is unlikely that it will be stored in Portland awaiting vessels coming upriver.

The more likely scenario might be that grain would be stored upriver, even stored on the ground if necessary, awaiting the return to minimum pool. If that timing is during July and August when there is no supply in storage and we are just beginning to harvest, our customers needs will not be met. This would be the worst possible scenario because our customer would go elsewhere. Vessels have regular ports of call. If that regularity is lost it may cost us our customer. Lost income for farmers means a greater trade deficit for our nation.

Service on rail is less than ideal, with hopper car shortages occurring frequently during time of high demand. Placing a heavier burden on the system during a drawdown will cause even greater problems. Other impediments to grower service are the railroad company abandonment of short haul feeder lines, and the emphasis on servicing stations that are capable of loading unit-trains. These are multiple grain car loadings of 25 or more in a specified restricted period of hours. Not all country such stations are charged higher freight rates.

Trucking is absolutely not an option. One barge load of wheat is 3500 tons. This would equate to 35 rail cars, or about 117 truckloads. This is absolutely contrary to the efficiencies and economies of scale offered by either rail or barge. American Waterways Operators published comparative rates for shipping grain from Clarkston, WA to the Portland District: By barge 20 cents per bushel; by rail 35 cents per bushel, by track 94 cents per bushel. Only when a distance of 700 miles from the export terminal is reached does rail have comparative rates.

There is no summary or conclusion to the report. It is obvious that there will be increased costs and these costs will be passed on to farmers who can ill afford them. Barge operators have told us they must meet their fixed costs even though the river is down. This means barge rates would increase.

Sincerely,

Kenneth R. Hart
Chairman, Oregon Grains Commission

WaterWatch

RIVERS NEED WATER

STATEMENT OF WATERWATCH OF OREGON
BEFORE THE U.S. HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON WATER AND POWER RESOURCES

HEARING ON FEDERAL ACTIVITIES INVOLVING OREGON WATERS
HERMISTON, OREGON

OCTOBER 4, 1995

Good afternoon, Mr. Chairman and members of the committee. WaterWatch is very pleased to be invited to speak on Umatilla Basin water issues. We first testified before Congress on these matters in July 1994. Our statement in that hearing focused on water spreading, the unauthorized use of federal project water, which has been a major issue in the Umatilla Basin since we exposed the practice here in 1990. Our written testimony from last year's hearing provides background information on water spreading and states some of WaterWatch's views on the issue. A copy is attached.

Since we wrote that earlier testimony, much has been said about water spreading, but little has been done. Our statement today first summarizes the events of the past fifteen months regarding the water spreading issue in the Northwest. We then discuss some recent progress in addressing water spreading here in the Umatilla Basin.

Water spreading, July '94 - '95: New light on an old issue

Since July 1994, the long-ignored issue of water spreading has gained greater attention than ever before. The Interior Department Inspector General issued a report on the subject. A House committee conducted an oversight hearing. And recovery plans for Northwest salmon called for an end to water spreading in the Northwest.

The Inspector General's Report.

> *[L]ands the Bureau identified as ineligible to receive Federal water were being irrigated from at least 24 projects in eight states despite the existence of other competing needs for water. In this regard, we found that the majority of the water delivered for ineligible lands could have been used to enhance stream flows for declining fisheries or to reduce potentially toxic irrigation drainage. In addition, those who irrigated ineligible lands from 1984 through 1992 received unintended financial benefits of between $37 million and $46 million ....*
> ◦Interior Department Acting Inspector General, July 1994

The Inspector General's July 1994 report found that Reclamation had failed to ensure that federal project water was used only on lands eligible to receive it under federal law. As a result, irrigators throughout the West were delivering federal water to unauthorized lands. The report summarized Reclamation's own figures on water spreading on 24 projects, but it did not estimate how much water spreading was occurring westwide.

The IG's review of these 24 projects showed that as many as 154,000 ineligible acres were receiving up to 429,000 acre-feet of water annually. About 75 percent of this unauthorized water spreading was occurring in the Columbia-Snake Basin. Six Oregon projects were listed: Baker, Crescent Lake Dam, Deschutes, Owhyee, Umatilla and Vale. The IG estimated that irrigators on these six projects were spreading about 122,700 acre-feet of water annually to over 49,000 acres, and had failed to reimburse taxpayers for over $4.5 million over nine years.

WaterWatch of Oregon • 213 Southwest Ash, Suite 208 • Portland, OR 97204
Phone: (503) 295-4039 Fax: (503) 295-2791 Email: watrwtch@teleport.com

The IG report also found that, according to Bureau officials and records, "about 75 percent of the water delivered to ineligible lands associated with the 24 projects could have been used to provide additional stream flows for protected species or to reduce potentially toxic irrigation drainage flows as allowed under state law." Of the 122,700 acre-feet being spread at Oregon projects, the IG found that all of it could have been used to provide streamflows to support protected species or tribal fisheries, or to reduce potentially toxic irrigation drainage.

The IG recommended that Reclamation take three specific steps to resolve water spreading, including developing a schedule and action plan for addressing the problem westwide. Reclamation concurred in the recommendations and promised to implement them.

The 1994 Congressional Hearing.

> *My feeling is that unless we act now to enforce the law and the contracts and address this problem head on, the administration of the entire program is going to be turned over to the Federal Courts. If we don't address the problem now, then I think the courts will.*
> °former Commissioner Dan Beard, July 1994

> *Well, I am very encouraged by your statement. You obviously understand this is a very involved situation and stability is a question of survival in the Northwest. And I understand you to say that one shoe cannot fit all feet, but there are some encouraging signs in the Pacific Northwest.... So I want to thank you for what I think is a very judgmental position in this whole area of conflict. You didn't think I would say that, did you?*
> °former Congressman Bob Smith, responding to a later comment from Beard, July 1994

On July 19, 1994, the Oversight & Investigations Subcommittee of the House Committee on Natural Resources held a hearing on "Water Use Practices on Bureau of Reclamation Projects." It focused heavily on the IG's report and Reclamation's response to it.

Except for the Commissioner and the IG, every witness at the hearing was from the Pacific Northwest. There was a particular focus on Oregon and the Umatilla Basin. The State of Oregon, the Oregon Water Resources Congress, the Confederated Tribes of the Umatilla, and WaterWatch all testified. All four of us expressed a strong interest in resolving water spreading cases in a way that is both timely and cooperative.

The 1994 hearing involved many differing points of view, but it was not acrimonious. Everyone seemed to agree that Reclamation must go forward to resolve water spreading, that it must act soon, that it must proceed on a case-by-case basis, and that it must work with all interested parties in addressing the issues. Even Bob Smith--who started out suggesting that the response to water spreading was part of a Clinton Administration "war on the West"--ended up agreeing that Reclamation's plans made sense.

The salmon plans.

> *Water spreading is the use of water for purposes (or in areas) other than those authorized by the BOR. In some areas there may be substantial amounts of water being diverted for unauthorized uses. This water should be made available for instream uses. By April 1996, the BOR and state water resources departments should identify and halt all instances of water spreading on Reclamation projects.*
> °NMFS Proposed Recovery Plan for Snake River Salmon, March 1995

One month after the water spreading hearing, the National Marine Fisheries Service took emergency action to list Snake River Chinook salmon as endangered. While the Snake River salmon stocks have received the greatest attention, many other anadromous and resident fish throughout the

Northwest--from lampreys to coho, suckers to steelhead--are also in serious peril. A major factor in their decline has been the degradation of freshwater habitat, including a lack of adequate streamflows.

The National Marine Fisheries Service produced its Proposed Recovery Plan for Snake River Salmon in March, 1995. Environmentalists throughout the Northwest slammed the plan as too weak to save the salmon. But as to water spreading, NMFS called for quick and serious action: it directed Reclamation and the states to end unauthorized water uses within one year and make spread water available for instream uses. The plan designated this action as "priority one." The NMFS statement followed a 1993 recommendation of Donald Bevan's salmon recovery team that Reclamation should investigate water spreading as part of an effort to end illegal water diversions in the Snake River Basin.

The Northwest Power Planning Council's 1994 Fish & Wildlife Program directed Reclamation to "[i]dentify all cases of water spreading on reclamation projects in the Columbia River Basin. Determine quantities and market values of water that has been spread by water users. Propose alternative approaches for addressing this issue, including alternatives that provide incentives for water conservation, that would make water available for instream uses and that recognize whether instream needs are satisfied."

The Columbia Basin Fish & Wildlife Authority and the Pacific Fishery Management Council also called for an end to water spreading. In addition, both the National Congress of American Indians and the Interior Department's Assistant Secretary for Indian Affairs asked Reclamation to correct water spreading so as to benefit affected Tribes.

Reclamation on water spreading: lots of talk, little action

Reclamation is actively seeking to eliminate the unauthorized use of water, sometimes referred to as water spreading. We are currently developing regulations for resolving any use of Reclamation project water not in compliance with federal law or Reclamation water contracts. These regulations will be published in the Federal Register for public comment in the spring, to be followed by public hearings.... At a time when demands on water resources in the West are multiplying, your readers can be confident that I am committed to ensuring the legal use of federal water.

°former Commissioner Dan Beard, January 1995

We understand that the Interior Department has suspended its efforts to write westwide rules on "water spreading" .... The Bureau of Reclamation has known for over a decade that water spreading is a major problem, but has done little to stop it. Your recent decision will effectively allow this illegal activity to continue. The Clinton Administration is taking the same approach to water spreading that the Reagan Administration did ten years ago: ignore it and hope it goes away.

°American Rivers, Idaho Rivers United, NRDC and WaterWatch, July 1995

Reclamation first examined the issue of water spreading in the early- to mid-1980s. It formed an informal "Ineligible Lands Task Force" led by the Pacific Northwest Region. This group issued a brief report in 1985, primarily emphasizing the need to collect more and better information on water spreading before proceeding to solve the problem. The report also identified "incentives for taking positive action to address the 'water spreading' issues," options for solving the problem, and constraints to implementing these options. Later that year, Reclamation opted to dissolve the task force and delegate the water spreading problem to the regional offices. "Because of the complexity and magnitude of the problem," wrote Acting Commissioner Robert Olson, "we are taking a long-range approach to resolution."

Long range, indeed. Reclamation simply ignored the problem until 1993, when controversy in the Pacific Northwest forced it to deal with water spreading. The Boise regional office established a

21-090 O - 96 - 4

broad-based water spreading task force of irrigators, Tribal representatives, conservationists, and state officials from Idaho, Oregon and Washington, along with Reclamation managers. At its initial meeting in February 1994, Commissioner Beard told the task force, "You should know that there is no doubt ... that we have to comply with the law, that we will comply with the law, and that we will solve this problem one way or the other."

The task force had several productive meetings and actually made some progress in addressing the key issues surrounding water spreading. It proved to be a wasted effort, however, because Reclamation chose to remove the issue from the Pacific Northwest region and handle it from its D.C. and Denver offices. This occurred shortly after Reclamation promised the Interior IG that it would establish a schedule, by region, for addressing water spreading, and that it would "develop plans to address the resolution of instances of unauthorized water deliveries by September 30, 1997."

Reclamation then began drafting rules for westwide application to address water spreading. These rules were purely procedural; they would simply have set up a framework in which Reclamation could have learned where water spreading may be occurring, determined whether the water uses were actually unauthorized, and followed a public process for resolving individual cases. In other words, the rules would have given Reclamation the means to address water spreading on a timely, case-by-case basis, with the involvement of all the key interests--just as everyone said they wanted in the last Congressional hearing.

Very quietly and with no real explanation, Reclamation terminated its rulemaking efforts this past winter. We understand that the water spreading issue has been given back to the regional offices, just as it was ten years ago. And we can expect the same result today as in 1985: no action.

So we have come full circle. The water spreading issue remains unresolved, while Reclamation remains unwilling to gather the facts, make decisions, and meet its responsibilities to irrigators, Tribes, public resources, and the American people.

Water spreading in the Umatilla Basin: finally, some progress

Today's issuance of state water rights for both fish and irrigation is a major step forward in resolving water spreading cooperatively.
°Antone Minthorn, Confederated Tribes of the Umatilla, July 1995

In contrast to its general inaction on water spreading, Reclamation has been doing its job here in the Umatilla River Basin. After years of ignoring water spreading by Umatilla districts, it began to get serious about resolving the matter in 1991. Since then, the issue of water spreading has been extremely controversial and usually frustrating to everyone concerned. Progress has been slow and often wiped out by setbacks (see our earlier testimony, attached). But today, in the fall of 1995, things are finally beginning to work.

For the first time, Reclamation and the districts negotiated and signed one-year contracts allowing lands outside district boundaries to receive project water legally in 1995. These contracts provided for modest increases in how much irrigators would pay for water to serve these lands. The irrigators committed their share of funding for a scientific study to assess the hydrologic impacts of district boundary expansion on the Umatilla River Basin. Two districts--those not served in 1995 by the federal exchange project--also agreed to provide a certain amount of water to benefit Umatilla River salmon and steelhead. In other words, these contracts benefited the irrigators, the fish, and the taxpayers, and they kept things moving toward a long-term solution.

Second, Reclamation settled claims for past out-of-boundary deliveries by the Westland Irrigation District. These deliveries, made in 1993 and 1994 contrary to specific Reclamation directives, could easily have been the subject of a court case. Instead, the parties settled their dispute

and kept things moving forward on a constructive basis.

Third, several parties reached agreement this summer on important new water rights for fish and farmers involving Reclamation's McKay Reservoir. The foundation of the deal was a 1993 agreement between the Westland and Teel Irrigation Districts and the Umatilla Tribes. WaterWatch and irrigators closed the deal through negotiations this spring and summer. Two of the new permits authorize irrigation--the bigger one provides a temporary right to use McKay water on the Teel lands outside the Westland boundaries, which had been the most notorious case of water spreading westwide. The other two new rights allow McKay to store and release up to 12,000 acre-feet of water to benefit Umatilla River fish. This new agreement doesn't provide a complete or permanent solution, but it is a very important step forward.

WaterWatch sees progress in these developments. Negotiations are working. Agencies and water users alike are meeting their legal responsibilities, including requirements of state water law and federal environmental law. Temporary agreements have given something to all the interests. And we're still working toward a permanent solution that can benefit irrigators, Tribes, taxpayers and the environment. That's how we think water spreading ought to be resolved--not just in the Umatilla Basin, but everywhere it occurs.

Conclusion

Oregon believes we can address the issues related to water spreading in a cooperative and constructive way. We look forward to working with Bureau staff, environmental interest groups and irrigation representatives to secure solutions acceptable to all.
°State of Oregon (Water Resources Department), July 1994

Recent events in the Umatilla Basin show what can happen when Reclamation takes its legal responsibilities seriously and commits to resolving water spreading positively. The process hasn't always been smooth, and even today no one is entirely satisfied. But we've temporarily resolved many issues in a way that most everyone can live with. And we're moving toward a permanent resolution that will be based on science, that will consider the needs of fish, farmers and other key interests, and that will comply with the law.

Umatilla irrigators say it isn't right that they are the only ones in the entire West who have to answer for their water spreading. They're right. But the problem isn't what *is* happening here in the Umatilla Basin. The problem is what *isn't* happening everywhere else.

Reclamation needs to step up and deal with water spreading throughout the Northwest and West. It has acknowledged that it must obey and enforce the law, and it has promised repeatedly to do so. Commissioner Beard told this Committee fifteen months ago that he would act. Since then, salmon authorities and tribal officials have issued strong calls for an end to water spreading. But outside of the Umatilla Basin, Reclamation has made no real move.

Water spreading is a controversial issue, no doubt. But among the key interests, there is more agreement than one might think about how to resolve it. Reclamation should consider each spreading case on its own merits, since no two cases are the same. It should make decisions on a timely basis, so as not to extend the uncertainty. Reclamation must give all key interests and the public a chance to get involved. And it must meet state and federal legal requirements.

With such an approach, Reclamation could comply with the law. What is more, it could meet its responsibilities to those who have a major stake in the waters of the West--not just irrigators, but Tribes and the public as well.

ATTACHMENT

STATEMENT OF WATERWATCH OF OREGON
BEFORE THE U.S. HOUSE NATURAL RESOURCES COMMITTEE
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

HEARING ON RECLAMATION PROJECT WATER SPREADING

JULY 19, 1994

WaterWatch of Oregon is pleased to offer testimony to this subcommittee on the subject of water spreading--the use of federal project water on lands, or for purposes, not authorized by the Bureau of Reclamation. WaterWatch is a nonprofit environmental group which works at the state and federal levels to restore and protect streamflows throughout Oregon.

Water spreading is a major issue in the Pacific Northwest. A 1983 Bureau report estimated that water was being spread on about 440,000 acres in the region. Even that estimate may be low, however, since no one really knows how big the problem is. The Bureau simply has not done much to uncover illegal water use, and has done even less to stop it.

Reclamation officials at both the regional and national levels are finally getting serious about ending water spreading. The Bureau faces heated opposition, however, from irrigators and others who defend the status quo. Any actions the Bureau takes to address water spreading will be very contentious.

In the Northwest, however, the water spreading debate is taking place within an even larger controversy. Throughout the region, fish populations are in extreme peril. Many stocks of salmon and other anadromous fish are either listed under the Endangered Species Act or are being considered for listing. Resident fish, from trout to suckers, are also in serious decline. The crash of these fisheries has been devastating to the communities that depend on them, from fishing towns on the coast to Indian Nations east of the Cascades.

The significance of the Northwest's salmon and steelhead runs, however, extends far beyond economics. These fish were the basis of the local indigenous culture, and in many ways these fish remain the defining feature of the region. Still, they are vanishing. Virtually everyone seems to agree that we should take swift and serious action to save and restore the fish. The question is, what can be done?

We must begin by recognizing that fish need water. The point may seem obvious, but it seems to be generally ignored. Recently, however, two Oregon studies have confirmed the importance of streamflows for anadromous fish. The Confederated Tribes of the Umatilla Indian Reservation and the Center for the Study of the Environment (CSE) both have established a strong positive relationship between river flows and returns of anadromous fish two to four years later. These separate studies involving two different rivers and two different species both show that as streamflows go, so go fish. CSE director Daniel Botkin was recently quoted in the *Oregonian* as saying that the clear lesson of his study "is do everything you can to raise minimum flows."

It is in this context that we consider large-scale spreading of Reclamation project water in the Northwest. WaterWatch and other environmentalists believe that the Bureau should consider the illegally used water as a potential source of streamflows badly needed for fish. The draft recovery plan for the listed stocks of Snake River salmon took the same position: "The BOR should correct undocumented or

illegal water diversions in the Snake River Basin. This should include an investigation of unauthorized uses of water such as 'water spreading'."

WaterWatch commends the Chairman and the subcommittee on holding hearings on this important issue. We offer the following views on the water spreading problem and the difficulties Reclamation will face in solving it. We also suggest a set of principles Reclamation should follow in ending water spreading and providing public benefits in western rivers.

What is water spreading and how has it happened?

Water spreading is the use of Reclamation project water on lands not authorized by the Bureau for such use. Project water is water developed under a federal irrigation project, or diverted or delivered through facilities built by Reclamation. Lands may be unauthorized to receive water because of (1) limitations of the legislation authorizing the federal project, (2) requirements of the water user's contract with the Bureau, (3) the statutory requirement that lands be classified by the Bureau as irrigable, or (4) requirements of state water law. The application of federal water contrary to one or more of these restrictions is water spreading.

To put it simply and broadly, water spreading has happened because irrigators have applied water to lands not authorized to receive it, and Reclamation has not enforced the requirements of federal statutes and contracts. Each individual case of water spreading, however, has its own cause(s). A recent Commissioner of Reclamation described some of the practices that have resulted in water spreading:

> Frequently, projects formulated for gravity flood irrigation from open unlined ditches have been converted over time to lined ditches, pipe laterals, and water-saving sprinkler technologies. Thus, conserved water becomes available to serve additional lands on the fringes of the project or within project and district boundaries. The application of such conserved water and uncontrolled waste water to ineligible lands is sometimes a knowledgeable, willful violation of Stated [sic] water rights, project authorizations, and water service or repayment contracts.

In other cases, water has been spread to lands classified as unirrigable which are adjacent to or surrounded by irrigable land.

Why is water spreading problematic?

As described above, water spreading violates federal contracts, federal statutes, state water law, or some combination of the three. It is not simply a legal problem, however. It also may harm both the federal treasury and the environment.

Repayment problems. By applying water to unauthorized lands, water users may pay less money to the Bureau than they rightly owe. Reclamation repayment contracts require water users to repay the federal government's costs of construction, operations and maintenance in regular installments. Since the 1939 Reclamation Project Act, the amount of these installments has been tied to water users' ability to pay. Many repayment contracts specifically link these annual installments to a particular irrigated acreage within the contracting district. Where users apply water to additional lands without the Bureau's approval, their payments may be smaller than they should be. If the Bureau were to approve irrigation of new lands, it could change the basis of repayment so as to increase the annual installments and reduce the amount lost to the government on zero-interest loans.

Reclamation has recognized that it is losing money because of water spreading, but it has never estimated the extent of the loss. Reclamation official Phillip Doe, however, offered a ballpark figure in 1992 during his whistle-blowing Congressional testimony:

> If we may assume that 1,000,000 acres are receiving water illegally because of the lack of a proper contract, then we can also come, through other calculations, to some approximation of the dollar value of the abuse. For instance, assume that each acre, on average, carries a water duty or need of 3 acre-feet and that the water, on average, carries a price tag of $5 per acre-foot. Under these assumptions, the American public is losing $15 million a year in recoverable costs, all as a result of the deliberate dithering of the managing federal agency.

Environmental problems. Water spreading also raises two distinct environmental issues. The first relates to the effect of individual cases of water spreading: an irrigator who spreads water may alter the quantity, quality and timing of return flows to the detriment of local streams and rivers. The second issue arises from the cumulative effects of water spreading on the rivers and streams of the West.

Individual cases of water spreading may harm the environment by diminishing the quantity of irrigation return flows. If an irrigator takes measures that reduce her seepage losses, and then uses the water saved to irrigate more land, her consumption will increase and return flows will decrease. If she moves water from lands near a river to lands much more distant, return flows to the river could be diminished or significantly delayed. In other words, water conservation measures that lead to water spreading can actually harm streamflows.

The use of water on unauthorized lands also may contribute to impaired water quality. Irrigation has created water quality problems in many parts of the West (most notably Kesterson National Wildlife Refuge) because return flows carry salts, heavy metals and other contaminants. When the Bureau classifies a parcel of land, it determines whether irrigation of that parcel will cause such problems. Thus, when an irrigator spreads water to unclassified lands, she increases the risk that return flows from those lands will adversely affect surface and ground water quality.

The major environmental controversy over water spreading, however, involves its cumulative effects on the rivers of the West. As explained above, project water is being used illegally on vast areas of land at a time when many salmonid fish stocks are sliding toward extinction in the Northwest, due in part to low flows in rivers and streams. The collapse of these stocks has had particularly severe effects on Native American tribes, whose economy, culture and religion center around salmon. These circumstances have led Northwest environmentalists and tribal representatives to call for an end to water spreading and a reallocation of illegally used water. If this unlawfully used water could be kept instream, Western rivers would have better fish and wildlife habitat, recreational opportunities, and water quality.

What has Reclamation done about water spreading Westwide?

Reclamation recognized in a 1983 report that federal water was being spread to over 660,000 acres Westwide. For unexplained reasons, however, the report stated that land classification work needed to remedy water spreading would be a low priority, and would not be completed within five years.

Reclamation then formed an informal "Ineligible Lands Task Force" led by the Pacific Northwest Region. This group issued a brief report in 1985, primarily emphasizing the need to collect more and better information on water spreading before proceeding to solve the problem. The report also identified "incentives for taking positive action to address the 'water spreading' issues," options for solving the

problem, and constraints to implementing these options. Later that year, Reclamation opted to dissolve the task force and delegate the water spreading problem to the regional offices. "Because of the complexity and magnitude of the problem," wrote Acting Commissioner Robert Olson, "we are taking a long-range approach to resolution."

Long range, indeed. Today, Reclamation can claim only limited progress in addressing a few scattered cases of water use on ineligible lands. It has issued guidelines for processing water users' requests to approve new lands for irrigation; these guidelines set forth requirements for compliance with NEPA and other federal laws. Reclamation is now processing its first expansion proposal (that of the Umatilla Basin irrigation districts, described below) under these guidelines. But the Bureau's water spreading problem--conservatively estimated at two-thirds of a million acres in 1983--has not yet been dented.

The Bureau now seems determined to change that. It has assembled a task force in the Pacific Northwest to provide public input on how to approach water spreading. The Water Spreading Task Force includes representatives of environmental groups, irrigation interests, Native American Tribes and state governments, as well as Reclamation officials. Commissioner Beard spoke to the task force in its first meeting, and he made it very clear that Reclamation would end water spreading. "You should know that there is no doubt . . . that we have to comply with the law, that we will comply with the law, and that we will solve this problem one way or the other."

A Case Study: Water spreading and streamflows in the Umatilla River Basin

The Bureau is beginning to comply with the law in the Umatilla Basin of northeastern Oregon, where the conflict between water spreading and instream water needs has been heated. Low flows and fish passage problems in the Umatilla, due largely to irrigation diversions, have virtually wiped out formerly abundant stocks of salmon and steelhead. The State of Oregon has recognized that in the Umatilla Basin, "Low streamflows are the chief limiting factor to salmonid production. Low streamflows impede and block fish migration, increase water temperatures, and contribute to reduced habitat and competition from warm water fish species."

The Confederated Tribes of the Umatilla Indian Reservation have reserved fishing rights under their 1855 treaty with the United States. Early in the 20th century, however, the Bureau built the Umatilla Project to provide irrigation water to local farmlands, and the fish soon disappeared. In 1988, Congress authorized a massive exchange project, funded by federal and Bonneville Power Administration dollars, which utilizes Columbia River water to restore flows needed to fulfill the treaty fishing rights of the Confederated Tribes while preserving the local agricultural base.

Four irrigation districts have contracts with the Bureau under the Umatilla Project, and they have spread water to approximately 17,000 acres of land outside their boundaries. These districts have now asked Reclamation to approve changes to their boundaries to reflect their actual water use, which would effectively legalize their current water spreading. As of this writing, the Bureau is at the "scoping" stage of analyzing the districts' request under the National Environmental Policy Act. But the National Marine Fisheries Service--the agency with primary responsibility for anadromous fish--has already taken a dim view of the proposal:

> We are concerned that the action proposed in the scoping document will: 1) authorize present potentially illegal water use in the basin; 2) encourage additional water withdrawal from the Umatilla that does not legally exist at present; 3) preclude the Umatilla project from achieving

its Congressionally mandated purpose; 4) preclude the project from meeting the Umatilla Tribal anadromous fish restoration expectations; and 5) set an unacceptable precedent for dealing with the over-allocation of water resources. In short, we believe that this apparent after-the-fact authorization of potentially illegal water use is extremely inappropriate.

Water spreading has created intense controversy in the Umatilla Basin. WaterWatch blew the whistle on illegal water use in the Basin, and for years we have fought for better enforcement of the law and improved streamflows in the Umatilla River. The Confederated Tribes seek restoration of the river and its fishery, based on their senior treaty rights. The irrigation districts defend their historic practices and seek to maintain their existing irrigated acreage. These parties have often tangled, but have also made a serious effort to resolve differences through negotiations. It hasn't been easy, but WaterWatch believes this constructive approach can lead to solutions which benefit everyone.

Reclamation has recognized, however, that it must take action even if the parties cannot agree. The Bureau has established some important precedent in dealing with water spreading in the Umatilla Basin. First, it has stated that lands not covered by contracts cannot receive project water, and it has ordered one district to stop delivering water to unauthorized lands. Second, Reclamation has taken the position that the districts cannot rely on continued deliveries of water they have used in violation of their contracts. Third, it has told the districts that they must prepare a full Environmental Impact Statement before their request for boundary expansion can be approved. Finally, it has stated that if the districts proceed with boundary expansion, the Bureau will give primary consideration to ensuring that fishery needs are met. We commend these recent actions by Reclamation, and urge it to apply these precedents as it addresses water spreading beyond the Umatilla Basin.

Ending water spreading and restoring streamflows

WaterWatch has strongly urged Reclamation to take actions which not only end water spreading, but also benefit the public interest in the waters of the West by improving instream flows. The Bureau has vowed to do the first, but said little about the second. Reclamation will face oppposition at every stage, however, and it will need to resolve a number of difficult legal and policy issues.

Legal issues. Many of the legal issues surrounding unauthorized water use have never been decided. The Bureau has no regulations regarding water spreading or contract enforcement. In addition, since contract enforcement seems to have been a low priority for most of Reclamation's history, little directly relevant case law exists. Thus, while Reclamation statutes and cases give the Bureau considerable authority and latitude, they provide few definitive answers to the legal questions surrounding water spreading.

One matter seems fairly clear: Reclamation has the power and the responsibility to enforce legal and contractual requirements. The Bureau has traditionally taken care of its irrigation constituency, and it has not enforced those rules--such as the former residency requirement and 160-acre limitation--which irrigators disliked. The courts have found nonetheless that Reclamation generally retains its sovereign authority, and carries a continuing duty to enforce laws it has long ignored. As one court said in a case involving the Bureau, "Inaction based on previous inaction cannot be elevated into an administrative determination to which the courts should defer."

Stopping all deliveries to unauthorized lands would obviously end water spreading. But that action would not, by itself, do much to restore streamflows. Many Western rivers are already overappropriated, with current users not getting all the water they want. If deliveries to unauthorized

lands are stopped, irrigators with Reclamation contracts may simply apply more water to those lands eligible to receive it. If these irrigators' diversions are reduced, others may take the water for irrigation, either under new Reclamation contracts or under existing state-law water rights. Thus, stopping water spreading--unless further changes are made--may merely scramble irrigation patterns, leaving rivers as dry as ever.

If the Bureau seeks to translate water spreading into streamflow restoration, it must take at least four distinct steps. First, it must terminate existing unauthorized deliveries--that is, it must end the status quo. Second, it must assume control of water that has been illegally used. Third, it must designate all or part of that water for instream uses. Finally, it must take steps to protect instream water from diversion for out-of-stream uses. Each of these actions raises legal issues that are beyond the scope of this testimony, but we have provided some analysis of these issues to the staff of this committee.

Policy issues. Even if Reclamation had unfettered discretion in addressing water spreading, it nonetheless would face difficult policy choices. The Bureau must balance the competing interests of several constituencies in seeking water spreading solutions. Reclamation's traditional clientele, irrigated agriculture, would like to resolve legal problems in a way that preserves the status quo as much as possible. U.S. taxpayers--a constituency that the Bureau has long ignored--would benefit from increased payments to the Treasury by those who have spread project water. Tribes and environmentalists now have the Bureau's ear for the first time, and they seek reallocation of illegally used water for instream purposes.

If Reclamation were to cut off all existing deliveries of water to unauthorized lands, but take no further action, none of these interests would be satisfied. Irrigated acreage would shrink, no additional revenue would flow to the Treasury, and environmental benefits would be uncertain. This option might meet legal requirements, but it would produce few winners.

For this reason, WaterWatch and other environmentalists have argued for an approach which would allow water spreading to be legalized under certain conditions, but would also provide for instream flows and for greater payments to the Treasury. Such an approach would face several obstacles, but it could provide benefits for many parties interested in water spreading.

We are trying to make this approach work in the Umatilla Basin. WaterWatch has been involved in negotiations with the Confederated Tribes, the irrigation districts, and the Bureau in an effort to resolve disputes over water use in the Basin. Earlier this year, the parties reached an agreement in principle that would provide short-term water for both agriculture and anadromous fish during the time that Reclamation considers the districts' boundary expansion proposal. In general, the agreement in principle requires each district to provide and protect Umatilla River flows needed for fish, and to waive their rights to the quantity of water they have used illegally. In return, the districts have the possibility of obtaining temporary contracts from the Bureau to allow the irrigation of lands outside their boundaries. All parties retain their rights to seek a different solution in the long run. Unfortunately, this agreement has not been finalized, and future negotiations are uncertain.

<u>An environmental approach to water spreading</u>

WaterWatch believes that Reclamation should address water spreading under the following principles:

A. *Water spreading is illegal and cannot continue.* Reclamation must determine where ineligible

lands are receiving water under federal contracts. It then must notify all water spreaders that the practice is illegal and that they must cease deliveries to ineligible lands by a date certain unless the Bureau approves these lands for irrigation. Reclamation must receive a formal expansion request before it can consider approving new lands for irrigation. The Bureau should also impose controls, such as periodic contract audits, to prevent future water spreading.

B. *Reclamation must assess environmental impacts before approving new lands for irrigation.* Reclamation must comply with NEPA in considering expansion requests, and must seek input from all affected interests and meet all requirements for public notice and participation. All expansion requests require at least an Environmental Assessment, and major requests (those exceeding a few thousand acres) will need a full Environmental Impact Statement. The entity requesting expansion must provide all funding for the necessary environmental studies. No request in a river basin may be approved until Reclamation has considered the cumulative impacts of water spreading in that basin.

C. *Reclamation must determine the amount of historic illegal water use.* Reclamation must determine the amount of water which has been diverted annually for application on ineligible lands. That quantity of water may no longer be diverted under the Reclamation contract, even for use on eligible lands. Thus, a person who violated a Reclamation contract by water spreading loses his right to take as much water as he illegally applied.

D. *Reclamation should reallocate illegally used water to benefit the public.* Reclamation should reallocate illegally used water where it has authority to do so. Where flows are insufficient to support public values in a natural waterway, Reclamation should reallocate illegally used water diverted from that waterway to the extent necessary to provide sufficient streamflows. Public values include fish and wildlife (including threatened and endangered species) habitat, water quality and recreation. Reclamation must take all actions necessary under federal and state law to ensure that water reallocated for public values is legally protected instream. Illegally used water may be reallocated for out-of-stream uses only if legally protected instream flows are sufficient to support public values. In reallocating water among competing out-of-stream uses, Reclamation should maximize public benefits.

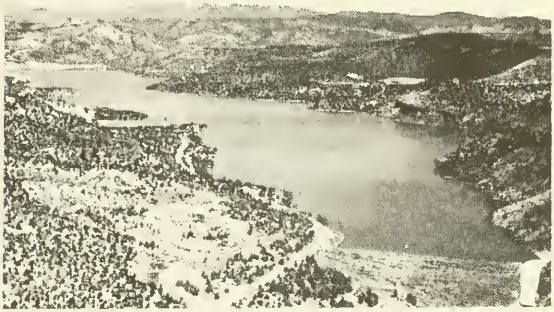
E. *Reclamation may approve new lands for irrigation under certain conditions.* Reclamation may approve requests to irrigate new lands under a contract, but total diversions under the amended contract must not exceed historic diversions for use on eligible lands. In addition, any adverse environmental impacts of a change must be fully mitigated. Reclamation should condition approvals on the implementation of specific water conservation measures by the requesting person. Reclamation must adjust repayment obligations to reflect the irrigation of new lands. Finally, water may be applied only to lands with state-law water rights.

Conclusion

WaterWatch commends Reclamation for turning its attention to the long-neglected issue of water spreading. Its job will not be easy, but as Commissioner Beard has said, the Bureau must comply with the law.

We also believe it must meet other responsibilities. These include Reclamation's responsibilities to the national public it has so often ignored, to the Indian Tribes it must serve as trustee, and to the rivers it has forever altered. In addressing water spreading, the Bureau has both a duty and an opportunity. We urge Reclamation to do all it can to make a wrong thing right.

OCHOCO IRRIGATION DISTRICT



1001 N. Deer Street • Prineville, Oregon 97754 • Phone (503) 447-6449

HUGH MOORE, MANAGER

OCHOCO IRRIGATION DISTRICT

OCHOCO IRRIGATION DISTRICT

PRINEVILLE, OREGON

97754

I am Hugh Moore, Secretary/Manager of Ochoco Irrigation District in Prineville, Oregon.

We are located in the geographical center of the State. Our area is considered to be semi-arid with 9.5 inches of annual precipitation. We are dependent upon stored water for irrigation which is supplied from two (2) reservoirs, Prineville Reservoir on the Crooked River and Ochoco Reservoir on Ochoco Creek.

Due to the canal size and pump capacity we are limited to the amount of water that can be utilized during an irrigation season from Prineville Reservoir. Our primary source of water is Ochoco Reservoir which supplies approximately 60% of demand. Water is applied to the 20,145 irrigated acres by sprinklers which require a constant amount for the duration of the season.

The Bureau of Reclamation began their study of Ochoco Dam under the Safety of Dams Project in 1985 by installing measuring devices in and around the dam. During the spring filling in 1989 high readings were recorded inside the structure. As a result, a restriction on the fill level was imposed. The restriction was placed at elevation 3110' or about 55% of capacity.

The reservoir was drawn down to deadpool in the fall of 1990 so a Bureau contractor could install a blanket of geotextile and geomembrane on the right abutment upstream of the dam. At this time we were told should the blanket do as expected there would be no further need for repairs. As the region had been experiencing severe drought conditions since 1986, the blanket was not tested because the pool did not fill to the restricted level.

During the drought years the 5,000 acres dependent on Ochoco only water received .75 acre feet per acre and as a result 50% of the irrigated land was left fallow. Water year 1993 was a good year, allowing the irrigators to receive near normal water supplies of 2.50 acre feet per acre. The 1993 water year allowed the farmers to plant their crops in September. Planting is recommended in the fall as spring plantings are susceptible to soil erosion from high winds. Their contract had been arranged to meet the Bureau's schedule of beginning construction on the dam in August of 1995. In December of 1993, the Bureau announced their accelerated schedule to begin construction in April 1994. An order was directed from the Boise BOR Office to begin an emergency evacuation of the reservoir pool on December 15, 1993.

The Bureau of Reclamation deferred our 1994 construction payment for one year. However, in 1995 we must make our current year payment plus the 1994 payment. The BOR acknowledged the crops newly planted

would be lost due to no water in 1994 and the Bureau was committed to providing assistance to the growers through tort claims. A small number of growers submitted claims. We were informed the BOR could not process the claims until after harvest as they would not know the amount of loss until they received an average for crops produced. The growers did not submit tort claims because of this information. In mid-October 1994, we were informed there was a deadline of November 1, 1994 for claims to be filed. A large number of growers were away for hunting season so only a few turned in claims. Others were going to make claims under the A.S.C.S. program which was determined later as being not eligible because the drought was "man caused", BOR, and not nature caused. As a result, only one (1) grower has received payment and it amounted to 15 cents on the dollar. I've seen no documentation of this, only word of mouth.

The repairs in 1994 resulted in nearly 5,000 acres receiving no water and 15,000 acres receiving 1.50 acre feet per acre. There was about 45% or 6,800 of these acres left fallow. Because of limited pump capacity from district facilities providing Crooked River water from Prineville Reservoir, an inadequate amount of water was available to users and land had to be left idle in order to have sufficient water for those crops under contract.

The winter of 1994-95 provided sufficient run-off to allocate 2.50 acre feet per acre. A wet spring allowed farmers to plant in the spring and all acres were planted. In May a leak was detected in the newly repaired Ochoco Dam. Because of the leak, or sinkhole, as it is now being called, the district is facing the very real possibility of NO water in 1996 and an unknown for 1997.

Our situation is this, we cannot continue to lose revenue on crops and suffer the expense of replanting crops lost due to lack of water! The United States Government, through the Bureau of Reclamation is obligated to reimburse the growers and the district for lost revenue. The ability to meet obligations and make a living has, and continues to be jeopardized when our water is taken.

WRITTEN STATEMENT TO THE

WATER AND POWER RESOURCES SUBCOMMITTEE

of the

HOUSE COMMITTEE ON RESOURCES

presented by

Hugh Moore, Manager

OCHOCO IRRIGATION DISTRICT

OCHOCO IRRIGATION DISTRICT, a nonprofit corporation is owned by the waterusers and is governed by a three (3) member board of directors elected by majority vote of over 750 water right holders. The district manager is hired by the board to oversee the day to day operations. The district has operated in this approved method since its organization by local farmers in 1914. The district is also referred to as the CROOKED RIVER PROJECT.

- CLIMATE -

Ochoco Irrigation District is located in Prineville, Crook County, Oregon, the geographical center of the State. Our high desert semi-arid climate has abundant sunshine, low humidity, rapid evaporation with variable temperatures. Average annual precipitation is 9.5 inches with no appreciable rainfall during the summer season.

- SOILS AND CROPS -

Sandy loam soils of good quality proves the area to be very suitable for all climatically adapted crops. A variety of crops are grown in the area. Alfalfa, grass hay, peppermint for oil, spearmint for oil and tea leaves. Feed and seed grains, garlic, carrot and onion seed. Sugar beets are becoming a desirable rotation crop. Cattle, horses and sheep are traditional to the region. Llamas have found a nontraditional livestock niche and quality animals are raised in the area.

Potatoes were grown in abundance, however lack of water caused a decline in crop acreage. This in turn forced the closure of a locally owned processing plant.

The majority of crops are planted in the months of September and October. Seed crops must become established before winter freezes

occur. Other crops are planted in the fall to avoid disturbing the loamy soil in the spring as it is susceptible to erosion by the strong spring winds.

- WATER SUPPLY -

The district supplies water to 20,145 acres of adjudicated water rights. To insure marketable crops irrigation water must be applied. Ochoco Irrigation District has two sources of water. The primary source, Ochoco Reservoir, has an active capacity of 46,500 acre feet. Its watershed covers 295 square miles, which is quite small making it dependent upon ample snowpack in the Ochoco Mountains. The run-off is carried into the reservoir by two major sources, Ochoco Creek to the east and Mill Creek to the north.

The supplemental source is Prineville Reservoir located at A.R. Bowman Dam on the Crooked River 20 miles south of the City of Prineville. The reservoir has an active storage capacity of 153,000 acre feet. It is fed by the Crooked River from the east. Its watershed, also in the Ochoco Mountains, encompasses 2,900 square miles.

Even though Prineville Reservoir has three times the storage capacity of Ochoco Reservoir, only a portion of belongs to the irrigators. When Bowman Dam was constructed in 1960 by the Bureau of Reclamation, storage space was sold to irrigators. The irrigators purchased storage space allowing a two year supply of water. Ochoco Irrigation District holds 59,600 acre feet of space, other irrigation interests hold 10,600 acre feet of space, totaling 70,200 acre feet. The remaining 82,800 acre feet is held in the name of the U. S. Government, allocated to irrigation purposes.

Water released from Bowman Dam into the Crooked River is diverted into irrigation canals 15 miles downstream. It then flows through the Crooked River Diversion Canal six miles to a district pump station. The water is then lifted 98 feet by way of five pumps, having a combined capacity of 140 cubic feet per second, traversing three quarters of a mile through pipeline to reach an open canal. Gravity flow then carries the water two and one-half miles to a relift pump station capable of lifting 98 cubic feet per second of water by pipeline an elevation of 94 feet discharging into Ochoco Feed Canal which is the main canal from Ochoco Reservoir.

- CONSERVATION -

Ochoco Irrigation District began a conservation project in the mid 1960's. Approximately 95 percent of the growers converted from gravity flood irrigation to sprinkler applied irrigation. Once this method was accepted, the district secured a Rehabilitation and Betterment Loan from the Bureau of Reclamation to replace some 40 miles of open laterals

in the system to pipeline.

- PROBLEMS ENCOUNTERED AT OCHOCO DAM -

The Bureau of Reclamation became concerned with seepage at Ochoco Dam in mid 1980. They drilled and installed measuring devices called piezometer wells in and around the dam. These wells furnished information on water pressures within and weir boxes installed at different locations at the toe of the dam furnished information on seepage flows from the dam. All of this information was compliled to determine the extent of deterioration of the dam.

During the 1989 spring fill, piezometer well 117-A, located on the crest of the dam, at a depth of 85 feet, running alongside the outlet tunnel, measured excess pressures in the dam. The pool was drawn down until the piezometer stabilized. Later in the fall a whirlpool was detected on the right abutment about 800 feet upstream of the dam. The reservoir was drawn down to deadpool in 1990 in order for the Bureau to install a fabric blanket (geotextile) and a plastic covering (geomembrane) over the area of the whirlpool. No water was wasted during these drawdowns as this area had been in drought conditions since 1987. The blanket was installed by a contractor and supervised by the Bureau. We were told at the time if the blanket performed in the manner that was expected no further repairs would be necessary to the dam. The spillway would be remodeled to meet the PMF (probable maximum flood) criteria. It was later discussed how the dam did need repairs as the outlet tunnel was an area of great concern and the pressures in piezometer 117-A were not reading as they should. The comprehensive "fix" was scheduled for August 1995. A fill restriction of 26,000 acre feet was placed on the reservoir.

The irrigation seasons of 1990 through 1992 were nearly nonexistant due to the drought. The 5,000 irrigated acres with Ochoco Reservoir as their only source were given the Ochoco water and no flows were brought on down the system to co-mingle with Crooked River water which served the rest of the district lands. Each acre was allocated .75 acre foot per acre. Crops require at least 2.0 acre feet of water per acre. Growers were forced to dry up less valuable crops in order to use the water on crops which were under contract. Approximately 50 percent of the Ochoco lands and 40 percent of the lands with Crooked River water were left idle.

Ochoco Reservoir filled to the restricted 26,000 acre feet in 1993. The Board of Directors allocated 2.50 acre feet per acre district wide. At the close of the '93 season the reservoir held a carry over of 10,500 acre feet for the 1994 season allowing idle lands to be put back into production. Crops were planted in the months of September and October.

In December 1993 the Bureau of Reclamation announced their decision to accelerate the repairs to Ochoco Dam. The reservoir was drained, dumping 10,500 acre feet of water. Water was pumped from the deadpool into the Ochoco Feed Canal in the spring of 1994. By the time the crops needed irrigating, the 8 to 10 cfs was so minimal, only three users were able to utilize it. Instead of August 1995, the repairs began April 1994.

Because crops were planted before the announcement was made by the Bureau to drain the reservoir, they agreed to direct disaster funds to the growers to compensate for their 'out of pocket' losses which later became tort claims which later became known as acquisition claims. There was a two year time period for filing claims. Early spring of 1994, notice was received the claims would not be processed until after harvest as the Bureau needed to know the average crop production in order to determine the losses. Mid October 1994, the district received notice that the two year period was wrong and the deadline to file a claim was November 1, 1994. Many of the growers were away hunting and did not file as they were given a choice of an acquisition claim with the Bureau or a disaster crop loss with the Agricultural Stabilization and Conservation Service. The decision not to allow the growers to file claims with the ASCS was made in Washington, D.C. on the basis the drought was man caused, BOR, and not nature caused. A devastating blow to this small group of growers!

The repairs were completed in December, 1994. The restriction was lifted and storing of winter run-off began mid-December. An abundant supply of water in the reservoir and a wet spring gave the area growers the spark they needed. Again, idle land was planted. Spring grains went in to be harvested early in order to plant fall crops. Mint was also planted in the spring hoping for a first year yield.

Wednesday, May 17, 1995 a spiked increase in seepage occured at two measurement locations at the dam. August 30, 1995 a sinkhole was found in the upstream face of the dam by Bureau divers. Questions were asked. How will the Bureau repair the sinkhole? How long will it take? Will there be water in 1996? All good questions with no definite answers.

- MONEY CONCERNS -

Growers who filed claims were notified in July 1995 vouchers would be sent to them notifying them of settlement. To my knowledge only one individual was offered a settlement and it was in his words, "Fifteen cents on the dollar".

The Bureau deferred our annual construction payment of $44,464 for one year in 1994, which we appreciated. However, we must pay the Bureau a sum of $88,928 for '94 and '95 by December 31, 1995. The concern is, what about 1996? Will there be water to irrigate crops in order for the users to pay their water charges so the district can meet the annual payment to the Bureau? If not, will the Bureau compensate the growers and/or the district for this payment because of crop losses?

The City of Prineville lost a well, not connected to the ground water at Ochoco. The Bureau issued a check to the City for $50,000 for a new well. The members of Ochoco Irrigation District must repay the Bureau 15 percent of this $50,000 gift.

A Farm Budget Analysis was prepared by the Bureau for determining the payability of the district. This analysis is so flawed it is useless. The District Board of Directors and Manager have pointed out these errors on several occasions with no success in getting these errors corrected. Loan officers at the banks laugh at the inaccuracy of this report. Economists from Oregon State University cannot believe the gross errors, yet our ability to pay is determined by this analysis. The first payment report presented to the board stated, we could and would pay $8.91 per water right acre. After much discussion and presenting the Bureau with factual evidence that the $8.91 was in error, Washington D.C. Office, Dan Beard, allowed this to be reduced to $6.52 per acre to be made in 18 annual payments. It appears to me in analyzing the Farm Budget Analysis the dollar figure of $6.52 was established and then the numbers were manipulated to reflect that amount. No contract has been signed. This district has demanded a new analysis be prepared by private economists. This has not been done.

The blanket installed in 1990 (referred to earlier) was billed at One Million Dollars. The district repaid 8.865 percent of the total cost at $2.60 per acre. The growers ability to pay has been reduced since 1988 when the analysis was prepared which determined the $2.60 per acre.

The years of drought since 1986 caused approximately 60 percent of the farm land to lay fallow. The shortage of water and crop rotation was instrumental in having less than prime crops. The grain shriveled due to lack of water as it was used on mint which was contracted. The mint was stressed from lack of water causing wilt to develop in the plant reducing the production.

The growers within Ochoco Irrigation District boundaries have suffered millions of dollars in losses. They may not survive another year with little or no water. The dollars lost because of the 1994 repairs have been approximately one-half of the cost of repairing the dam. If we do not have water for the 1996 season, several growers will be bankrupt.

The district, as a whole, has suffered financially due to the 1994 repairs. Growers having the 5,000 acres of Ochoco only water were required to pay a reduced amount of $9.00 per acre for water charges even though they received very little or no water. Growers in the rest of the district's 15,000 acres paid more in water charges to help compensate the district for the loss of the 5,000 acres charges. The majority of the district users had a reduction of 50 percent of their normal water supply yet they were assessed nearly one and one-half times more.

Needless to say, the stress among the growers and district employees was very high. The stress levels are still fiddle string tight because of the uncertainties.

Ochoco Irrigation District is requesting the Bureau compensate the growers for the taking of their livelihood. No one person or group within a Governmental Agengy should be allowed to deprive an individual of their livelihood or dignity.

Ochoco Irrigation District is appealing to the elected officials to press for legislation to correct such gross injustice as has been and continues to be experienced by this district and its growers.

Thank you for the opportunity to present this information with the confidence it will be taken back to Washington D.C. and our plight will be given the serious consideration we feel it derserves.

OCHOCO IRRIGATION DISTRICT

1001 N. Deer Street • Prineville, Oregon 97754
Phone (503) 447-6449 FAX (503) 447-3978

The following information is supplied by OCHOCO IRRIGATION DISTRICT. Much of the information was compiled from District Board minutes. Only those portions pertinent to Ochoco Dam and the Safety of Dams Project were copied. The portion relating to the percentage of the pay-back and payability is part of the Safety of Dams Program.

Ochoco Irrigation District is facing a future Safety of Dams Project at Bowman Dam on the Crooked River, a U.S.B.R. facility. The purpose is to correct spillway deficiencies.

The water stored in Prineville Reservoir, behind Bowman Dam is allocated for irrigation and flood control. The U.S.B.R. is reportedly scheduled to seek Congressional Authorization to reallocate the unsold space for other uses. It is the consensus of the Board of Directors of Ochoco Irrigation District no action on reallocation should be considered until such time the problems are solved at Ochoco Dam.

The Bureau of Reclamation cannot be given the opportunity to jeopardize the district's water supply at both facilities. Ochoco Irrigation District has suffered severely emotionally and monetarily because of the Safety of Dams Project at Ochoco Dam.

Respectfully submitted,

OCHOCO IRRIGATION DISTRICT

Hugh Moore

Hugh Moore, Manager

OCHOCO IRRIGATION DISTRICT

1001 N. Deer Street • Prineville, Oregon 97754
Phone (503) 447-6449 FAX (503) 447-3978

TABLE OF CONTENTS

COVER LETTER FROM HUGH MOORE, MANAGER
OCHOCO IRRIGATION DISTRICT

		Pages
1	.....OCHOCO DAM INFORMATION SUMMARY.....	3
2	.....SUMMARY OF TECH. VIABLE ALTERNATIVES.....	13
3	.....OCHOCO IRRIGATION DIST. BOARD MINUTES.....	34
4	.....OCHOCO SAFETY OF DAMS DOCUMENT.....	5
5	.....PAYMENT CAPACITY ANALYSIS--OCHOCO IRR. DIST...	3
6	.....SAFETY OF DAMS PAYMENT CAPACITY ANALYSIS.....	13
7	.....OCHOCO DAM PAYMENT CAPACITY BUDGET.....	14
8	.....LETTER TO MARK O. HATFIELD--NOV. 15, 1994.....	2
9	.....LETTER FROM MARK O. HATFIELD--NOV. 28, 1994...	3
10	.....LETTER TO AL REINERS, BOR--DEC. 16, 1994.....	2
11	.....LETTER TO MARK O. HATFIELD--DEC 19, 1994.....	2

[Committee Note: Due to the volume, these documents were placed in the record files of the committee.]

(Submitted by Doug Breese)

OCHOCO IRRIGATION DISTRICT

Estimated Economic Impact - Ochoco Reservoir

Safety of Dams Project

The following is an illustration of the economic impact related to the de-watering of Ochoco Reservoir until the Safety of Dams project is completed.

Crop Value per Acre[1]

Year	Acreage	Crop Value	Crop Value/Acre
1992	13848	$ 7,863,819.85	$ 567.86
1991	13741	7,420,995.10	540.06
1990	16020	8,864,467.52	553.33
1989	18608	9,050,455.30	486.37
1988	15806	8,567,554.90	542.04
			---
		ave.	537.93

Acreage Impacted

Acres served by Ochoco Reservoir exclusively:	8000
Ochoco water mixed with Crooked River:	3600
(30% of 12000 acres)	---
Total Acres	11600

Economic Impact

1994 11600 ac. x $537.93 = $6,239,968.00 x 2.5 (economic multiplier) = $15,599,570.00
1995 (same as 1994)

Total dollar loss (1994 - 1995) = $ 31,199,940.00 *

* Figure does not represent 1996 production costs associated with re-establishing perennial crops (alfalfa, mint, other hay, etc.) damaged by lack of water. Yields for 1996 for these crops would be approximately 50% of normal.

* Figure does not reflect loss of economic activity in the community associated with recreation at Ochoco Reservoir. User days in 1992 were reported to exceed 109,000.

[1]Crop Production and Water Utilization Report - Ochoco Irrigation District, Annual Reports, 1988 - 1992.

Prepared by: Tim Deboodt, OSU Crook County Extension Agent

ECONOMIC ANALYSIS OF DISASTER PROGRAM PAYMENTS TO OCHOCO IRRIGATION DISTRICT IRRIGATORS

The recent decision to drain and repair the OCHOCO Dam will cause a number of agricultural producers to lose all or part of their production for one to two years. For those producers that sustain 100% losses, the results could be financially devastating, especially given that many crop expenses have already been incurred for the 1994 crop year.

Interest has been expressed in developing an assistance program to mitigate the effects caused by the loss of irrigation water to district irrigators. Such a program could take many forms, including direct payments, low-interest loans, and debt restructuring options. For policy-makers considering such a program, two questions must be addressed. First, how beneficial is the program in mitigating the impacts of the drainage of the dam? Secondly, what are the costs of the program to the public?

This brief economic analysis answers these two questions for one program option: direct disaster payments to growers. This option was analyzed for several reasons. Direct payments are commonly made in cases of natural disaster, such as drought, flood, or freeze. ASCS had a program in place to compensate producers for the drought in 1991 and 1992. Finally, direct payments were considered to be the most effective option for ensuring the financial health of agricultural producers who likely have both short- and long-term loan obligations over the next two years. Because the repairs of the dam will not increase agricultural productivity in the future (compared to the past 10 years),

producers would likely not be able to repay loans after the dam comes back on-line.

This analysis is for the land area which will lose all of its irrigation water. It represents about 30 growers who have all or a significant proportion of their acreage in the affected area. The acreage included represents approximately 4266 reported crop acres which accounts for 53 percent of the estimated 8000 acres which receive water exclusively from Ochoco Reservoir and will be directly and totally affected (no irrigation water at all) by the construction project. The remaining unreported acreage is mostly small tracts of irrigated pastures. This analysis does not attempt to evaluate the economic impact to the remaining 12,000 district acres which will be partially affected by reduced water delivery. Growers on partially affected lands may or may not be able to paticipate in a disaster payment program depending on whether they produced more or less than the threshold yield. Therefore, total program costs will likely exceed these budgeted estimates.

The acreage in the various crops was obtained from the 1993 Bureau of Reclamation Crop Production and Water Utilization report. Price and yield data was obtained from Oregon County market rates and disaster yields, ASCS.

In budgeting costs and returns for the 100% affected producers, certain assumptions were used. First, several scenarios were analyzed with respect to yield and price adjustments for an ASCS-type disaster payment program. The yield adjustments were a percentage of county average yields, although a producer may use actual proven yields if they have adequate records. Under an ASCS

disaster payment program, producers are only compensated if their yields fall below the percentage threshold. Since the 100% affected producers will not be able to produce anything, the threshold percentage was treated as a percentage reduction from county average yields. Under past disaster programs, farmers only received a fraction of the price as well. Several price and yield percentage scenarios were analyzed to show the impact on producers of various levels of relief.

For most of the crops in the area affected, producers have already incurred some production costs and some other production costs must still be paid later in the season, even though they may abandon the crop. These costs were estimated based on OSU enterprise budget data.

For the perennial crops, one year's share of paying the cost of establishing the crop was included, despite the fact that this is a fixed cost.

Since fixed costs vary widely among producers, they were not included in the analysis. Rather, this analysis calculated the residual net return, after paying costs that have already been spent, that would remain to cover fixed costs and other financial obligations.

Labor was included in this residual category because the proportion of owner labor versus hired labor varies widely among producers. Other fixed obligations would include debt servicing payments (principal and interest), land rent, electricity demand charges, and family living expenses (including income taxes).

CROOK

Percent Factor:
Yield Adjustment 50.00%
Price Adjustment 50.00%

	Peppermint	Alfalfa	Other Hay	Wheat	Carrot Sd	Pasture1
Income:						
Yield	33.00	2.15	1.30	47.50	200.00	9.00
Price	7.32	46.82	33.10	1.80	3.00	12.00
	$241.40	$100.65	$43.03	$85.50	$600.00	$108.00
Costs:						
Burning	15.15	0.00	0.00	0.00	0.00	0.00
Machinery	0.00	0.00	0.00	5.42	10.59	0.00
Seed	0.00	0.00	0.00	19.86	29.77	0.00
Fertilizer	50.30	6.33	0.00	14.35	70.06	0.00
Irrigation	12.48	.00	0.00	0.00	5.52	0.00
Chemicals	52.81	. 78	0.00	0.00	96.42	0.00
Establishment	75.57	78.45	0.00	0.00	0.00	0.00
Total Costs	$206.31	$108.56	$0.00	$39.63	$212.36	$0.00
Net Returns 3	$35.09	($7.91)	$43.03	$45.87	$387.64	$108.00
% of Total Acres	21%	18%	21%	13%	0%	27%
Acres of Crop	914	766	897	541	0	1,148
	$32,068	($6,057)	$38,598	$24,816	$0	$123,984

4,266 Acres

506,572 Cost to Gov't
118.75 Cost per Acre, Before Cash Costs

213,408 Total to Farmers, After Cash Expenses
50.03 Total per Acre, After Cash Costs

23,749 Payment per Farm, Before Cash Costs 2
10,005 Payment Per Farm, After Cash Costs 2, 3

1 There is no ASCS program for pasture and an AUM basis was used.
2 Calculated on 200 acres per farm.
3 Residual to Family Living Expenses, all Labor, Land & Equipment principle and interest payments, and Electicity Demand Costs, etc.

Percent Factor:
Yield Adjustment 60.00%
Price Adjustment 65.00%

	Peppermint	Alfalfa	Other Hay	Wheat	Carrot Sd	Pasture1
Income:						
Yield	39.60	2.58	1.56	57.00	240.00	9.00
Price	9.51	60.86	43.03	2.34	3.90	12.00
	$376.58	$157.02	$67.13	$133.38	$936.00	$108.00
Costs:						
Burning	15.15	0.00	0.00	0.00	0.00	0.00
Machinery	0.00	0.00	0.00	5.42	10.59	0.00
Seed	0.00	0.00	0.00	19.86	29.77	0.00
Fertilizer	50.30	6.33	0.00	14.35	70.06	0.00
Irrigation	12.48	0.00	0.00	0.00	5.52	0.00
Chemicals	52.81	23.78	0.00	0.00	96.42	0.00
Establishment	75.57	78.45	0.00	0.00	0.00	0.00
Total Costs	$206.31	$108.56	$0.00	$39.63	$212.36	$0.00
Net Returns 3	$170.27	$48.46	$67.13	$93.75	$723.64	$108.00
% of Total Acres	21%	18%	21%	13%	0%	27%
Acres of Crop	914	766	897	541	0	1,148
	$155,623	$37,118	$60,213	$50,719	$0	$123,984

4,266 Acres

720,821 Cost to Gov't
168.97 Cost per Acre, Before Cash Costs

427,657 Total to Farmers, After Cash Expenses
100.25 Total per Acre, After Cash Costs

33,794 Payment per Farm, Before Cash Costs 2
20,050 Payment Per Farm, After Cash Costs 2, 3

1 There is no ASCS program for pasture and an AUM basis was used.
2 Calculated on 200 acres per farm.
3 Residual to Family Living Expenses, all Labor, Land & Equipment principle and interest payments, and Electicity Demand Costs, etc.

Percent Factor:
Yield Adjustment 75.00%
Price Adjustment 75.00%

	Peppermint	Alfalfa	Other Hay	Wheat	Carrot Sd	Pasture1
Income:						
Yield	49.50	3.23	1.95	71.25	300.00	9.00
Price	10.97	70.22	49.65	2.70	4.50	12.00
	$543.14	$226.47	$96.82	$192.37	$1,350.00	$108.00
Costs:						
Burning	15.15	0.00	0.00	0.00	0.00	0.00
Machinery	0.00	0.00	0.00	5.42	10.59	0.00
Seed	0.00	0.00	0.00	19.86	29.77	0.00
Fertilizer	50.30	6.33	0.00	14.35	70.06	0.00
Irrigation	12.48	0.00	0.00	0.00	5.52	0.00
Chemicals	52.81	23.78	0.00	0.00	96.42	0.00
Establishment	75.57	78.45	0.00	0.00	0.00	0.00
Total Costs	$206.31	$108.56	$0.00	$39.63	$212.36	$0.00
Net Returns 3	$336.83	$117.91	$96.82	$152.75	$1,137.64	$108.00
% of Total Acres	21%	18%	21%	13%	0%	27%
Acres of Crop	914	766	897	541	0	1,148
	$307,861	$90,317	$86,845	$82,635	$0	$123,984

4,266 Acres

984,807 Cost to Gov't
230.85 Cost per Acre, Before Cash Costs

691,643 Total to Farmers, After Cash Expenses
162.13 Total per Acre, After Cash Costs

46,170 Payment per Farm, Before Cash Costs 2
32,426 Payment Per Farm, After Cash Costs 2, 3

1 There is no ASCS program for pasture and an AUM basis was used.
2 Calculated on 200 acres per farm.
3 Residual to Family Living Expenses, all Labor, Land & Equipment principle and interest payments, and Electicity Demand Costs, etc.

Percent Factor:
Yield Adjustment 100.00%
Price Adjustment 100.00%

	Peppermint	Alfalfa	Other Hay	Wheat	Carrot Sd	Pasture1
Income:						
Yield	66.00	4.30	2.60	95.00	400.00	9.00
Price	14.63	93.63	66.20	3.60	6.00	12.00
	$965.58	$402.61	$172.12	$342.00	$2,400.00	$108.00
Costs:						
Burning	15.15	0.00	0.00	0.00	0.00	0.00
Machinery	0.00	0.00	0.00	5.42	10.59	0.00
Seed	0.00	0.00	0.00	19.86	29.77	0.00
Fertilizer	50.30	6.33	0.00	14.35	70.06	0.00
Irrigation	12.48	0.00	0.00	0.00	5.52	0.00
Chemicals	52.81	23.78	0.00	0.00	96.42	0.00
Establishment	75.57	78.45	0.00	0.00	0.00	0.00
Total Costs	$206.31	$108.56	$0.00	$39.63	$212.36	$0.00
Net Returns 3	$759.27	$294.05	$172.12	$302.37	$2,187.64	$108.00
% of Total Acres	21%	18%	21%	13%	0%	27%
Acres of Crop	914	766	897	541	0	1,148
	$693,973	$225,242	$154,392	$163,582	$0	$123,984

4,266 Acres

1,654,336 Cost to Gov't
387.80 Cost per Acre, Before Cash Costs

1,361,172 Total to Farmers, After Cash Expenses
319.07 Total per Acre, After Cash Costs

77,559 Payment per Farm, Before Cash Costs 2
63,815 Payment Per Farm, After Cash Costs 2, 3

1 There is no ASCS program for pasture and an AUM basis was used.
2 Calculated on 200 acres per farm.
3 Residual to Family Living Expenses, all Labor, Land & Equipment principle and interest payments, and Electicity Demand Costs, etc.

SUMMARY TABLE

	Program Option				
	0/0	50/50	60/65	75/75	100/100
Total Cost to Government	0	506,572	720,821	984,807	1,654,336
Payment per Acre (weighted average)	0.00	118.75	168.97	230.85	387.80
Residual 1	-68.72	50.03	100.25	162.13	319.07

1 Residual (after paying 1994 crop costs already incurred) remaining for family living expenses, all labor, land & equipment principal and interest payments, and electical demand costs, etc.

TESTIMONY OF LAWRENCE B. REW
222 Southeast Dorion Avenue
Pendleton, Oregon 97801
Chair, Umatilla Basin Watershed Council

for

U. S. House of Representatives
Natural Resources Committee
Water and Energy Subcommittee
Field Hearing
Hermiston, Oregon
October 4, 1995

I am Lawrence B. Rew. I live on a fifth generation family diversified dryland, partly irrigated crop production ranch and raise registered cattle. I am an attorney, having practiced law in the Northeastern Oregon area for 34 years. I have been involved in leadership capacities with local, state and national organizations both as a volunteer and as a paid executive. I am the chair of the Umatilla Basin Watershed Council and have served in that capacity since the inception of the council in 1994.

The Umatilla Basin Watershed Council is a local volunteer based organization appointed by the Umatilla County Commissioners pursuant to a 1993 Oregon statute (HB2215), reaffirmed by a 1995 act, HB3441. The statutes creating the basin councils were developed and managed through the Oregon lawmaking processes by our local representative, Chuck Norris.

The Section 1 Preamble to the first statute (HB2215) provides an excellent outline of why local volunteer based watershed councils are the most efficient and effective organizations and structures to maintain, restore and enhance watershed health:

///

///

"SECTION 1. (1) The Legislative Assembly finds that:

(a) The long-term protection of the water resources of this state, including sustainable watershed functions, is an essential component of Oregon's environmental and economic stability and growth;

(b) Each watershed in Oregon is unique, requiring different management techniques and programs;

(c) Management techniques and programs for the protection and enhancement of watersheds can be most effective and efficient when voluntarily initiated at the local level;

(d) Cooperative partnerships between affected private individuals, interested citizens and representatives of local, state and federal agencies may improve opportunities to achieve the protection, enhancement and restoration of the state's watersheds; and

(e) The establishment of such cooperative partnerships should be encouraged by local individuals, local organizations and representatives of state agencies ...."

The watershed council system takes advantage of local knowledge of the watershed and mixes that with professional expertise of agencies such as Fish and Wildlife, tribes and Soil and Water Conservation to name just a few.

We must maintain and in many cases restore the health of our watersheds or we will not survive. There is a need for coordinated international natural resources planning, but the work is going to be done locally. I have a passing concern with the destruction of rainforests in South America, but can do little about it. But I can with some funding, help restore the salmon to the Umatilla River in this county and maintain and increase the steelhead runs in Birch Creek in this county. My friends, neighbors and the agency staffs can do something here.

Watershed councils are fiscally efficient. Everyone gets a bigger bang for the buck spent. An example is the Wallowa County, Oregon, Nez Perce Tribe Salmon Habitat Enhancement Plan. Wallowa County is the home of a number of the streams

and rivers targeted for restoration of salmon runs for the Columbia River system. A comprehensive survey and report was organized, planned and implemented by a volunteer/professional watershed organization identifying what needed to be done and how to do it. The total cost was $5,000.00. A similar agency cost would have been $50,000.00 to $100,000.00.

Local knowledge, expertise and money savings may pale in importance to the effectiveness of watershed councils being able to get the job done. Land, water, wildlife and fish are owned by or pass through both public and private owned property. With such a mix, it is imperative that the private landowners buy into any plan. If the private landowners are involved in the planning process, implementation becomes easy. There are many examples of how it works, but let me give you one from this county:

> Wildhorse Creek is a small creek north and east of Pendleton, Oregon, that because of its peculiar conditions occurring almost each year carries high amounts of sediment into the Umatilla River at critical times during salmon runs. Though much of Wildhorse Creek is within the Confederated Tribes Reservation boundaries, most of the land that it runs through is privately owned. The tribe has within the last year negotiated arrangements with private owners to fence off the creek from cattle grazing and as an exchange, plant and maintain land of the private owners to native grass for the cattle. This program is now getting statewide attention. Much of the labor for this process was provided by local school age tribal members.

Watershed councils and organizations can and have solved problems that the courts cannot. It provides a forum for people of all natural resource persuasion to sit down together and explore, argue and resolve contentious resource issues. Probably each one of us has a natural resources agenda that we feel passionate about and we have the right answer. In my opinion, the only future for resolution of these important issues of natural resource use, maintenance and restoration will be by local

participation, not in the courtroom or in sprawling state and federal agencies.

On behalf of myself and the Umatilla Basin Watershed Council, I urge this committee to support local watershed organizations both philosophically and financially. Watershed councils need among other things paid coordinators and funding for projects within watersheds by watershed councils and their project partners.

Testimony of:

C.R. "Chuck" Norris

Representative, Oregon House of Representatives, District 57

Post Office Box 121

Hermiston, OR 97838

For The:

U.S. House of Representatives

Natural Resources Committee

Water & Energy Subcommittee Field Hearing

Hermiston, Oregon

October 4, 1995

CHARLES R. "CHUCK" NORRIS
UMATILLA COUNTY
DISTRICT 57

REPLY TO ADDRESS INDICATED
House of Representatives
Salem, Oregon 97310-1347
P.O. 121 725 E. Highland Ave
Hermiston, Oregon 97838

Phone: 503/567-8638
FAX: 503/567-0926

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

October 4, 1995

The Honorable John T. Doolittle, Chairman
Subcommittee on Water and Power Resources
U.S. House of Representatives Committee on Resources
Washington, DC 20515

Dear Chairman Doolittle:

I deeply appreciate your subcommittee's visit and interest in "*Federal Government Actions Affecting Oregonians' Water Rights*", especially our concerns regarding the future configuration and operation of the Columbia River System. I regret that I am out of town and unable to personally attend your hearing. Therefore, I ask that this letter and the enclosures thereto be included in your hearing record.

I wish to address two issues affecting the Columbia River System. They are the proposed drawdown of the John Day Reservoir and the proposal by the Northwest Power Planning Council to seek Presidential or Congressional authority to establish a Columbia Basin Watershed Planning Council. To do that, I enclose copies of earlier correspondence on those subjects as follows.

> DRAWDOWN OF THE JOHN DAY RESERVOIR: My letter of January 30, 1995 to William Stelle, Regional Director of the National Marine Fisheries Service voicing my strong objection to the NMFS proposed drawdown, especially in the face of rejection of such action by the Snake River Salmon Recovery Team chaired by Dr. Donald E. Bevan. I invite your special attention to the enclosed pages from the "Bevan Report" specifically rejecting drawdown.
>
> COLUMBIA BASIN WATERSHED PLANNING COUNCIL (Proposed for establishment by by the Northwest Power Planning Council): My letter of November 8, 1994 to Steve Crow, NWPPC objecting to such action. I stress that Oregon now has a recognized and growing program for the establishment and operation of <u>voluntary local</u> watershed councils, a program which enjoys enthusiastic local support and which has grown from two pilot projects to over thirty recognized councils in two years. State, federal and regional agencies (including the NWPPC) are free and encouraged to participate with those <u>voluntary local</u> councils, but I object strenuously to the potential for overwhelming those councils with unwanted regulation and "assistance".

For the last three sessions of the Oregon Legislature it has been my responsibility and privilege to chair the House Water Policy Committee, and I am deeply committed to the subject of today's hearing. Again, I appreciate the interest shown by yourself and your subcommittee members in our local concerns for this vital issue.

Sincerely,

C.R. "Chuck" Norris

Two enclosures: As stated above.

CHARLES R. "CHUCK" NORRIS
UMATILLA COUNTY
DISTRICT 57

REPLY TO ADDRESS INDICATED
☑ House of Representatives
Salem, Oregon 97310-1347
☐ P.O. 121 725 E. Highland Ave
Hermiston, Oregon 97838

H-277 State Capitol
Phone: 503/986-1457
FAX: 503/986-1322

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

January 30, 1995

William Stelle, Regional Director
National Marine Fisheries Service
7600 Sand Point Way NE, VIN C15700
Seattle, Washington 98115-0070

Dear Director Stelle:

Recently I received and read with dismay the NOAA 95-R105 news release of January 25, "NATIONAL MARINE FISHERIES SERVICE RELEASES DRAFT BIOLOGICAL OPINION TO SAVE COLUMBIA RIVER BASIN SALMON". I recognize that the release states that the opinion ". . .is subject to a 10-day review. . ." only by specified parties, but the impact of its implementation on Oregon and Washington in general and District 57, which I represent, in particular will be so socioeconomically harsh, that I am compelled to comment at every opportunity.

From a reading of the news release and enclosures thereto, let me first acknowledge what appear to be some positive aspects, namely a recommendation that downstream transportation of smolts be recognized and improved and that drawdowns of lower Snake River reservoirs are apparently deferred due to the opinion that there is a "need to resolve bypass problems before drawdown to spillway crest can occur." That is all the mildly good news that I can find!

Your news release states, in part:

> "The opinion is a biologically sound and financially affordable blueprint for restoring the health of the Columbia and Snake Basin," said William Stelle, director of NMFS' Northwest regional office in Seattle. "These actions will not only <u>recover species listed as endangered but will also help restore dozens of salmon stocks that are at historically low levels.</u>" (Emphasis added.)

I submit that the "biological soundness" of the opinion is speculative at best and in its entirety lacks support based on either science or practical experience, and your assertions regarding "recovery" and "restoration" smack of certainty unwarranted by either. It is certainly <u>not</u> financially affordable if the total cost is to be borne by the Bonneville Power Administration and dependent rate payers.

Your release further states:

> "The opinion incorporates the <u>best science available</u>. <u>It is based on the recommendations of the Snake River Recovery Team</u>, and it builds on the work of the Northwest Power Planning Council." (Emphasis added.)

At least in terms of their recommendations of May, 1994 your reference to the Snake

Encl 1

River Recovery Team (I assume you mean the "Bevan Team") is supreme irony. Your news release, again in part, states on the fact sheet on page 25:

> ". . . At John Day Dam on the Columbia, the draft opinion calls for a permanent drawdown to minimum operating pool by 1996 and further study of a spillway crest drawdown."

On the other hand the Bevan Team recommendations stated, in part: (See Page VIII 70 which, along with Page VIII 71, is attached as Enclosure 1)

> ". . .The Team has considered, and rejected (emphasis added) as a recommended recovery action, the current plans to drawdown John Day Reservoir from minimum irrigation pool (MIP) to MOP. (Minimimum Operating Pool) The survival benefits of drawing down John Day pool a few feet (maybe only two or three feet) from MIP to MOP are too small to be reliably determined." So much for scientific support for a drawdown of the John Day Reservoir!

When one acknowledges the qualifications of the seven-member "Bevan Team", I submit that their analyses and recommendations are the closest anyone has come to a scientific conclusion in a matter that defies replication of previous results of testing of hypotheses.

I acknowledge, with regret, that the Northwest Power Planning Council (NPPC) supported drawdown of the John Day Reservoir in their untimely and scientifically and politically questionable recovery decision of December 14, 1994--scientifically questionable because of the apparent rejection or obliviousness of the Bevan Team recommendation and politically questionable because they proceeded to reach their decision in the face of rigorous, written objection by seven of the eight senators of the states represented on the NPPC. (See Enclosure 2 attached.) I am searching for reasonable restraint in asserting that their decision was politically driven by the states of Idaho (witness Governor Andrus' hasty replacement of a probably dissenting member), Oregon and Washington. Only Stan Grace and John Etchart, the delegates of Montana, rejected that decision, largely on the grounds that I have expressed or implied heretofore. (Their written objections are attached as Enclosure 3 hereto.)

The adverse consequences of even a temporary drawdown of the John Day (or any other) Reservoir on resident fish and wildlife, recreation, navigation and irrigation have been oft-stated and are well-known, and I will not belabor them. Notwithstanding reference to "mitigation", for communities of Oregon and Washington bordering the Mid-Columbia drawdown may well be socioeconomically devastating. The probable impact on the production of hydroelectric power will reach far beyond those communities.

During the past eighteen months I have served as the chairman of the Oregon Energy Policy Review Committee, a nine member group of three each state senators, state representatives and public members. In that role my deep concern for the future availability of electrical power was expanded and intensified. Implementation of the NMFS biological opinion will certainly exacerbate that concern as both NMFS and the NPPC appear to accord little recognition to Section 4.(h)(5) of the Pacific Northwest Electric Power Planning and Conservation Act (PL 96-501) which requires assurance of ". . .an adequate, efficient, economical, and reliable power supply." The drafting of reservoirs and spills will certainly reduce the production of hydroelectric power on which the Northwest is so closely dependent.

I realize that at this stage of the game you are supposed to restrict your considerations and recommendations to the biological aspects of the species in question. However, the adverse socioeconomic consequences of your position are so severe that I offer two personal opinions.

1. Ultimately, your recommendations should invoke the participation of the "God Squad" (the "Endangered Species Committee", Section 4<e>, Endangered Species Act of 1973.) to consider and ameliorate or eliminate those consequences.

2. At a time when the Endangered Species Act (ESA) faces the probability of substantial amendment in the course of reauthorization by the Congress, the NMFS recommendations may trigger a severe "backfire". I certainly hope so!

Mr. Stelle, I respect your position as imposed by the ESA, but obviously I am committed to opposing it in any manner that I feel that I can. I am certainly not "anti-salmon", but I am strongly "pro-people". I harbor serious doubts that man-made efforts can offset natural phenomena, such as inhospitable ocean conditions. I regret and apologize for the length of my message but it reflects my deep and sincere concern, as well as that of many of my constituents who recognize and depend on the benefits of the Columbia River as now configured and operated.

Your continued attention in this matter will be appreciated.

Sincerely,

C.R. "Chuck" Norris

Three enclosures: As stated above.

cc:
US Sen Mark Hatfield, OR
US Sen Bob Packwood, OR
US Sen Slade Gorton, WA
US Sen Dirk Kempthorne, ID
US Sen Frank Murkowski, AK
US Rep Wes Cooley, OR
US Rep Doc Hastings, WA
US Rep Don Young, AK
OR Sen Gordon Smith
OR Sen Greg Walden
OR Rep Beverly Clarno
OR Rep Ray Baum
Governor John Kitzhaber
ODF&W Dir Rudolf Rosen
OR WRD Dir Martha Pagel
Rolland Schmitten, Director, NMFS
Merritt Tuttle, NMFS, OR
Stan Grace, NPPC, MT
John Etchart, NPPC, ID
Maj Gen E.J. Harrell, CoEngrs
The East Oregonian
The Hermiston Herald
The Tri-City Herald
The Capital Press
Agri-Times Northwest
The Walla Walla Union-Bulletin
Bonneville Power Administration
Port of Morrow
Port of Umatilla
Dr. Donald Bevan

A. Recovery Team Appointments

Following the listing of Snake River sockeye salmon, *Oncorhynchus nerka*, as an endangered species under the Endangered Species Act (ESA) (see Chapter II, Background for more detail), The National Marine Fisheries Service (NMFS) appointed the Snake River Salmon Recovery Team (Team), to independently develop recovery plan recommendations. Upon subsequent listings of Snake River spring/summer and fall chinook salmon, *Oncorhynchus tshawytscha*, as threatened species, the Team's responsibilities were expanded to include these fish. The included three biologists, two engineers, an ecologist, and an economist (see Table I-1). NMFS was not represented on the Team.

Table I-1. Recovery Team members and background

Donald E. Bevan, Ph.D., Chairman	Professor Emeritus of Fisheries and Marine Affairs. Former Dean and Director, College of Fisheries, University of Washington. Former member Pacific and North Pacific Fishery Management Council's scientific and statistical committees. Former member North Pacific Fishery Management Council.
John P. Harville, Ph.D., Vice Chairman	Ecologist. Retired. Executive Director, Pacific Marine Fisheries Commission. Member of the Pacific and North Pacific Fishery Management Councils. Initial Director, Moss Landing Marine Laboratories of California State Colleges.
Peter K. Bergman, Ph.D.	Fishery Biologist. Manager of Biological Research, Northwest Marine Technology. Executive Director, Salmon and Steelhead Advisory Commission. Retired Chief of Salmon Management, Washington Department of Fisheries.
Theodore C. Bjornn, Ph.D.	Fish Biologist. Cooperative Fish and Wildlife Research Unit, University of Idaho. National Biological Survey, Dept. of the Interior.
James A. Crutchfield, Ph.D.	Natural Resource Economist. Professor Emeritus, University of Washington, Economics and School of Marine Affairs. Vice-President, Natural Resource Consultants. Former member and Chairman, Pacific Fishery Management Council.
Peter C. Klingeman, Ph.D.	Professor of Civil Engineering, Oregon State University. Specialist in hydraulics, hydrology, river engineering, impact assessment, and river basin planning and management.
James W. Litchfield	Power Engineer. Private Consultant in Energy. Former Director of Power Planning for the Northwest Power Planning Council. Led the development of the Northwest Conservation and Electric Power Plans in 1983, 1986 and 1991.

B. Recovery Planning Requirements

Section 4(f) of the ESA requires the development and implementation of recovery plans for all species listed as endangered or threatened unless it is determined that a plan will not lead to the recovery of the species. Recovery plans provide guidance for resource management and thus assist federal agencies in using their authorities to further the purposes of the ESA. The National Oceanic and Atmospheric Administration's NMFS is responsible for identifying and promoting actions for the recovery of many endangered and threatened marine and

The Team has considered, and rejected as a recommended recovery action, the current plans to drawdown John Day Reservoir from minimum irrigation pool (MIP) to MOP. The survival benefits of drawing down John Day pool a few feet (maybe only two or three feet) from MIP to MOP are too small to be reliably determined. The Team believes the proposed John Day drawdown will not be a significant recovery action for ESA-listed Snake River salmon because of the relatively small change in elevations (and thus velocities) from the current operation. And in any case, the majority of ESA-listed salmonid smolts will be collected and transported from the Snake River and McNary dams during the early recovery period. Only in years of higher than average spring runoff is it likely that large numbers of ESA-listed smolts will pass through John Day Reservoir.

The proposed drawdown of John Day Reservoir to MOP (a maximum of 5 feet, but more likely 3-4 feet below MIP) has significant uncertainties with respect to the biological costs and benefits. Little is known about the interactions between flow and salmon survival in John Day Reservoir. One study (Giorgi et al. 1990) concluded that no relationship could be observed between juvenile fall chinook salmon travel time and flow in John Day Reservoir. However, the ability to capture marked fish at John Day Dam probably limited the study's results. Giorgi observed that a large portion of the marked fish migrated upstream and did not exhibit consistent displacement downstream. This effect made it impossible to estimate a relationship between flow and travel time. Another study (Berggren and Filardo 1991) found "the similarity in shape of the resulting curvilinear relations to that of a water particle transit time through the index reaches and river flow tended to support a causative, rather than simple correlative relationship, between smolt travel time and river flow." However, the resulting regression analysis for juvenile fall chinook through John Day Reservoir was only able to explain 33% of the variability through a bivariate analysis based on flow. A third study, by Miller and Sims (1983), found that there was no statistical evidence to indicate that instream flows affected either the rate of movement or residence time of juvenile chinook in John Day.

Predicting the physical impacts of drawdown in the form of changes in WPTT is a fairly straightforward calculation. In one study (Ruff et al. 1993), the drawdown was separated into two levels and the changes in WPTT were estimated for the entire 50-year historical flow record. The first level was to reduce the reservoir elevation to the minimum irrigation pool that is already called for in the Council's *Strategy for Salmon*. This elevation varies across the irrigation season, beginning at 263.5 feet in April and increasing to 265 feet in August. The reason for the increase is to offset the reduced flows as the season progresses and elevation of the reservoir changes. Assuming the flows that occurred in the eight lowest flow years, the estimates of WPTT in the lower Columbia with John Day pool at MIP range from 11 days during May up to 22.2 days in August. By reducing John Day Reservoir to MOP (the second level) at elevation 257, the range of WPTT over the same range of flows is from 10.2 to 20.3 days. Lowering John Day Reservoir elevation from MIP to MOP had a maximum effect on WPTT of 0.8 to 1.9 days (8.6% reduction). The actual change in WPTT would be less because the reservoir will not be operated exactly at MOP but instead will probably be operated in a range of elevations from MOP to MOP plus 1.5 feet. In most years when flows are higher the change in travel time would be smaller.

Encl 1

The biological impacts of drawdown have been analyzed using the Council's Passage Analysis Model (PAM) (McConnaha 1993). This analysis looked at the survival impacts of drawing down John Day from NFP (268 feet) to MOP (257 feet). While the drawdown analyzed was greater than the change proposed, the results provide an indication of the possible biological benefits of drawdown at John Day. This analysis showed only small increases in survival of Snake River spring/summer chinook because most of these fish are currently collected and transported from dams with collection facilities upstream from John Day Reservoir. The model predicted that the largest improvement in survivals would occur in the highest flow years. This counter-intuitive result was caused by the "share the risk" policy of the fish agencies: when flows exceed 100 kcfs at Lower Granite Dam, the agencies return fish to the river at Little Goose and Lower Monumental dams rather than transport them. When this happens there are more fish migrating in the river and the increase in survival predicted with the model in the high flow years would be 2-3%. In years with average or below average runoffs, the change in survival was estimated to be less than 1%.

Aside from any benefits that might accrue to juvenile salmon as they migrate through a drawn down John Day Reservoir, there may be adverse impacts on the juvenile fish passage facilities at the dam. These facilities, including the orifices, were designed to operate at MOP (257 feet). According to the design criteria, this is the minimum head that can be used. However, the orifices have not been tested at this elevation and there are concerns that larger orifices may be needed. Testing is needed to determine the impact of drawdown on the effectiveness of the juvenile passage facilities.

Possible problems from drawdown with the adult passage facilities at John Day Dam include problems with the slot velocities in the flow control section of the adult ladders, which could increase delay and jumping and also change water temperatures in the ladder and the control section. These and other consequences of drawing down John Day need to be studied (and solutions identified) before a decision is made to proceed with drawdown.

While drawdown will reduce the cross sectional area of the reservoir, it will also reduce the shoreline and wetland area. Several major wildlife refuges (Umatilla National Wildlife refuge, and Willow Creek and Irrigon wildlife areas) will be impacted by lowering the ground water levels in areas adjacent to the river, drainage of water from established marshes, and exposure of shallow water habitat areas. Ruff et al. (1993) estimate that 8400 acres of backwater sloughs, marshes, and shallow water areas would be exposed and 2095 acres of wetland/riparian habitat would be impacted.

Two hatcheries pump ground water from wells affected by the level of John Day Reservoir. The Umatilla and Irrigon hatcheries are currently having problems withdrawing the water the hatcheries need from the aquifer. Drawdown will reduce ground water levels, which will further impact both hatcheries. Studies are currently underway to find solutions to the water supply problems of these hatcheries but John Day drawdown could reduce the water supply by as much as 30% to 50% (Ruff et al. 1993).

United States Senate
WASHINGTON, DC 20510

December 13, 1994

Angus Duncan, Chairman
Northwest Power Planning Council
851 S.W. Sixth Avenue
Suite 1100
Portland, OR 97204

Dear Angus:

We are writing to express our serious concern that the Council is proceeding too hastily to reach a final decision on its revised Salmon Strategy. We strongly recommend the Council take the appropriate time needed to present a cohesive plan for public comment.

We appreciated the opportunity to review the five options for salmon presented earlier this fall as draft amendments to the Columbia River Basin Fish and Wildlife Program. However, the options represent widely divergent, and often mutually exclusive, strategies for recovering salmon populations.

We understand you received thousands of verbal and written comments during the public comment period which closed on November 10. Given the technical and detailed nature of many responses, it is difficult to imagine that they will receive the analysis and consideration they deserve if the Council rushes to a final decision on December 15, as we are hearing is your intent. We also feel that the Congressional support needed for implementation of the amendments will be easier to achieve if the Council proceeds at a more deliberate pace, and solicits additional comments on a specific proposal.

We believe nothing less than the credibility of the Council is at stake. We are aware of no mandated timelines dictating the completion of your process this month. Rather, we believe it would be wise to take the time to display to the public a focused strategy for salmon which results from reasoned consideration of the comments received on the options. If that were done, the total effect, not only on salmon recovery, but on implications for irrigation, power production, river commerce and communities would be clearer and more understandable.

Encl 2

It is the Council's responsibility to assure that the final Strategy for Salmon results from sound science and represents a true and lasting regional consensus. To assure that the Strategy creates such a foundation for the long term, we urge you to take this additional step.

Sincerely,

Bob Packwood

Costly salmon program ignores sound science

John Etchart Stan Grace

Guest Comment

The fish and wildlife amendments passed in December by the Northwest Power Planning Council have been hailed in the regional news media as the salvation of Northwest salmon and steelhead. The words "bold" and "leadership" have been used to describe the December action.

We disagree. We represent Montana on the council, and we voted against these amendments.

We want the region to know why we voted no. It is not because we don't care about salmon, which have commercial, recreational, ecological and even spiritual importance to the region.

We voted no because we believe that the hoped-for benefits of major elements of these amendments are based on flimsy evidence or no evidence at all. Costs are too high; outcomes can't be monitored; and the rulemaking was rushed to adoption in a process more motivated by politics than biology.

Bold leadership? Not at all. We believe the council majority has failed the region by passing an amended program that spends money we don't have; asks for water that isn't available; and in effect ignores science.

In mandating drawdowns of Snake and Columbia river reservoirs to speed up flows, for example, the council majority ignored studies the council itself contracted for: the analysis of the U.S. Army Corps. of Engineers and the advice of the National Marine Fisheries Service Snake River Recovery Team.

All of this is not to say that the hydropower system hasn't damaged salmon runs. But the council now wants to spend another $138 million annually, or over 78 percent of the new program funds, on dam and reservoir manipulation to speed or enhance downstream passage of juvenile salmon.

By our conservative estimate, the region has spent in excess of $2 billion in the last 14 years on a fish and wildlife program that has higher velocity as its centerpiece.

Does this investment make sense? Last year a group of independent scientists, the Scientific Review Group, told the council that while river conditions were important, improvements in salmon runs may not be possible until feeding and rearing conditions in the oceans improve.

These conditions are due in part to the El Nino phenomenon, which very probably will continue to reduce runs in the ocean no matter what we do and how much we spend in the rivers.

But we support making a good-faith effort in any case. Some less costly measures in the program are clearly beneficial to fish, like accelerated irrigation diversion screening, harvest restrictions, habitat improvement, hatchery reform and surface collectors for fish to bypass the dams. And many of these more modest investments are longer term and will restore runs when ocean conditions improve.

But the very expensive faster-flow provisions in the amendments, including drawdown, carry a high risk of waste with no long-term investment effects.

Flash-flush efforts affect at best a matter of days in the fishes' lives, unlike longer term investments in habitat that can provide benefits for individual fish for up to a year or more and continue to benefit other year classes for decades.

Unfortunately, the council is fixated on fish flush and drawdowns that have a probability of causing more biological harm than good and may be a total waste of hundreds of millions of dollars.

Moreover, these council amendments, if fully implemented, could seriously endanger the reliability of the federal Columbia River power system.

The Regional Power Act that established the council above all requires the council to preserve an "adequate, efficient, and economic power supply" in the Columbia Basin.

We sought to persuade the rest of the council that the amendments needed more scrutiny and additional public comment. The amendment package that was eventually passed was never sent out for comment. We also wanted a better analysis of the potential costs, impacts and implications of the amendments on power system reliability.

We are concerned that Northwest rate payers understand how expensive the council program will be. The average cost of the program as amended is estimated to be $427 million each year, by far the most expensive fish mitigation program in history.

Paying a price for actually helping fish is one thing. Paying a very high price on a small chance of benefit is high-stakes gambling.

Throwing the dice with the public's money is bad policy, not bold leadership. We voted no.

Stan Grace and John Etchart are Montana's representatives on the Northwest Power Planning Council

CHARLES R. "CHUCK" NORRIS
UMATILLA COUNTY
DISTRICT 57

REPLY TO ADDRESS INDICATED
☐ House of Representatives
Salem, Oregon 97310-1347
☑ P.O. 121, 725 E. Highland Ave
Hermiston, Oregon 97838

567-8638, Ofc Ph & FAX

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

November 8, 1994

NW Power Planning Council
Attn: Steve Crow
851 SW 6th Avenue, Suite 1100
Portland, OR 97204

Dear Mr. Crow:

With reference to Angus Duncan's letter to me, under date of October 27, 1994, received yesterday, I seriously question the extension of the Council's responsibility to ecosystem planning for the Columbia River Basin and the creation of yet additional federal agencies to study and manage fish and wildlife issues within that basin.

The State of Oregon, acting by and through the Water Resources Department, is responsible for conducting comprehensive basin planning for all river basins in Oregon. In 1993 the Legislature passed and the Governor signed House Bill 2215 authorizing and promoting the establishment of local, voluntary watershed councils. The movement to establish such councils is growing, and it needs breathing space, not more outside attention and, probably, regulation. I cannot speak to the programs that may exist in Idaho, Montana and Washington, but I should think that they, too, may favor a dominance of state and local initiative, influence and action.

I firmly assert that the last thing we need is a NWPPC "invitation" to either the Administration or the Congress, neither of which has exhibited any discernible sensitivity to the concerns and opinions of affected locales in environmental matters, to impose by executive or legislative fiat another layer of oversight and cost in the Columbia Basin. In particular I would view such federal intervention as a threat to the establishment and viability of the local, voluntary watershed councils. (Granting that while a creature of federal law the NWPPC is not a federal entity per see, I am already concerned by what appears to me to be substantial involvement by the NWPPC into the affairs of the Grande Ronde Watershed Council.) Federal participation usually means some federal money. Federal money always means federal supervision and reports, a smothering of local initiative and incentives. And, of course, higher costs. Remember the "Golden Rule"--those who furnish the gold make the rules.

End 2

Obviously, there are federal agencies, primarily the US Forest Service and the Bureau of Land Management, that must be active participants in basin/watershed activities--to include membership in local, voluntary watershed councils--where the lands for which they are responsible are an integral part of the watershed in question. That does not, however, justify another federal entity exercising overall authority.

I recognize that the NWPPC is a four-state, not an exclusively Oregon, organization, all the more reason for me to be extremely wary of any further extension of the Council's influence and authority in what should primarily be state and local functions and responsibilities. I concede that the NWPPC has a legitimate interest in basin conditions and planning and should be kept informed and invited to be a partner where appropriate, but like the old Greyhound Bus commercial, "Leave the driving to us!"

As the referenced letter established a comment deadline of November 10, 1994 and in view of the fact that I received that letter only yesterday, I am "FAXing" this letter to you with hard copy to follow.

Sincerely,

C.R. "Chuck" Norris

cc: Angus Duncan, NWPPC
Senator Gordon Smith
Representative Ray Baum
Anne Squier, Office of the Governor
Martha Pagel, Water Resources Department

P.S. My earlier reference to "the Congress" applied to that body as a whole and not to Senators Hatfield and Packwood or Congressman Bob Smith who have been sensitive to local concerns.

Oregon

NORTHWEST
ELECTRIC
POWER &
CONSERVATION
PLANNING
COUNCIL

Ted Hallock
Angus Duncan
Council Members

October 27, 1994

Chuck Norris
State Representative
Oregon House of Representatives
H277 State Capitol
Salem, OR 97310

Dear Mr. Norris:

Several weeks ago, I forwarded a document to you for your information and consideration. The document proposed the establishment of a Columbia Basin Watershed Planning Council. As mentioned previously, I appreciate your interest and welcome your comments.

This proposal has taken shape as an amendment to the Northwest Power Planning Council's Fish and Wildlife Program. If adopted, the amendment would seek Presidential action or authorizing legislation from Congress to extend the Council's responsibility to ecosystem planning for the Columbia River Basin. The Council would be directed to establish a general plan for the conservation and efficient use of the waters, and lands affecting those waters, of the Columbia River Basin. It would also require Federal agencies to be accountable to this Basin Plan, and to explain inconsistencies to the Council and the Congress.

A copy of the amendment is enclosed for your information. Comment for the draft amendments to the Fish and Wildlife Program are needed before November 10, 1994. If you have already submitted comments regarding the proposal to the Oregon office of the NW Power Planning Council, those comments will be entered into the official record unless you indicate otherwise.

Written comments should be addressed to Steve Crow, Director of Public Affairs, NW Power Planning Council, 851 SW 6th Avenue, Suite 1100, Portland, Oregon, 97204. Comments may also be addressed to Angus Duncan, Oregon Offfice, NW Power Planning Council, 620 SW 5th Avenue, Suite 1025, Portland, Oregon, 97204. Comments sent to the Oregon office will be forwarded to the Council and included in the rulemaking record.

Thank you again for your interest.

Sincerely,

Angus Duncan
Council Member

enclosure

NOV 07 1994

Barbara Roberts
Governor

620 SW 5th Avenue
Suite 1025
Portland, OR 97204
(503) 229-5171
FAX (503) 229-5173

TESTIMONY

of Robert E. Hoeffel-Consultant
Oregon Water Coalition

October 10, 1995

written for the

SUBCOMMITTEE ON WATER AND POWER RESOURCES

of the

HOUSE COMMITTEE ON RESOURCES

Chairman Doolittle, Committee Members and Staff.

Thank you for giving us the opportunity to comment to this committee. My name is Robert Hoeffel. I am a consultant for the Oregon Water Coalition (OWC). OWC represents 186 member cities, businesses, ports, farms and citizens that are dependent upon agriculture for their economic base.

OWC strongly supports the passage of HR 2392. This legislation will fulfill the intent of Public Law #100-557. It will settle once and for all the water spreading issue that has been used by the Bureau of Reclamation (BOR), The Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and WaterWatch of Oregon to extort water from irrigators for increased river flows for fish.

The CTUIR speaks of their cooperative efforts and the BOR and WaterWatch speak of negotiations. It is OWC's opinion that were you to speak with the stake holders who are affected by these cooperative efforts and negotiations they would liken it more to extortion and blackmail.

Opponents say this legislation will have significant impacts on the people of the Umatilla Basin. We couldn't agree more. It will allow the irrigators to plan their cropping patterns, obtain operating capitol, and future investments based on the adequate water supply promised in the enabling legislation for the Umatilla Basin Project Act.

CTUIR states that, "as a Federal Representative you have a legal fiduciary Trust Responsibility to protect their treaty resources." May we remind you that McKay Reservoir and the waters stored within are not on the Reservation and are not a treaty resource. This reservoir was authorized by taxpayers and built by the BOR for irrigation and only irrigation.

In recent years the irrigators have worked cooperatively with the CTUIR donating irrigation waters for fish flows to enhance the rebuilding of salmon runs in the Umatilla River.

Now the donating of this water isn't good enough the BOR has obtained a limited license for a water right from the State of Oregon to use stored water for fish flows. BOR has taken 12,000 acre/feet of McKay water and given it to fish flows. Even though this reservoir is only authorized for irrigation. The new additional $8.00 per acre assessment, to lands declared to be outside the BOR recognized boundaries, is just another way to have the irrigators pay for the water being released for fish flows.

If water spreading is truly impacting the fishery on the Umatilla River. How is it that the Tribes are realizing the highest percentage of increase of returned fish on the Columbia System. This is the first year that the BOR has taken water from irrigators for fish. In the past they have worked with the irrigators and the water was provided by irrigators at irrigators expense. Now the water is provided by the BOR for CTUIR at the irrigators expense.

Again, passage of HR 2392 is a must and just. It merely solidifies the intent of the Umatilla Basin Project Act. It will settle the water spreading issue. Thus taking away the leverage that WaterWatch of Oregon, CTUIR and BOR have used to extort water and money for fishery enhancement from irrigated agriculture.

On the matter of drawdowns we have given much testimony opposing these actions for this hearing we will support the testimony of the Oregon Grains Commission and Oregon Wheat. It is our opinion that drawdowns are of no benefit to the fishery. It will destroy the rural economies of the Northwest making it easy for the Federal Government Agencies to take control. Quite frankly, based on recent practices of the BOR and the Reclamation Act of 1992, we don't see that as a benefit to the economy of the Northwest or it's rural residents.

Do not be swayed from the purpose and intent of HR 2392. For agriculture to continue to provide the abundant, healthy, inexpensive food supply we enjoy today, we must afford it the ability to maintain and increase production at a rate equal to our exploding populations.

Thank you again for this opportunity to comment.

Sincerely,

Robert E. Hoeffel, Consultant
Oregon Water Coalition
P.O. Box 1276
Hermiston, OR 97838
PH:503-564-0279
Fax:503-564-9158

PORT OF MORROW
MORROW COUNTY OREGON
P.O. Box 200, Boardman, OR 97818
(503) 481-PORT • Fax (503) 481-2679

October 17, 1995

Water and Power Subcommittee
Chairman, Congressman Doolittle
1337 Longworth House Office Bldg.
Washington, D.C. 20515

Dear Congressman Doolittle:

I am Gary Neal, General Manager of the Port of Morrow, which is a Public Agency established by the voters of Morrow County to assist in the economic well being of its' citizens and the region the Port serves.

The Port of Morrow supports House Bill 2392. This bill would resolve the issue of irrigation district boundaries within the Umatilla Basin Project Act of October, 1988. This unresolved boundary issue has been very detrimental to the long term stability of our agricultural community and was to have been resolved and completed by the Bureau of Reclamation in 1986. Again in 1988, this issue was to have been a part of the Umatilla Basin Project Act, and now it is time to complete the boundary changes as was before assured to be completed.

This bill does not allow any more water to be used than existing federal contracts or state water law allows. It also does not allow any more acreage to be irrigated with federal water than were receiving water prior to October of 1988. This bill does not conflict with Oregon water law. This will also save both the federal government and the irrigation districts large amounts of money that both the government and the districts have a limited amount of.

House Bill 2392 helps solve the irrigation districts boundary issues of the Umatilla Basin Project. This will assist in maintaining a stable agricultural economy in our region. The districts, the farmers and the other business of our region can move forward with long term planning and hopefully make a positive impact for our future.

The Port of Morrow also strongly opposes any drawdown of the John Day Reservoir, or any of the reservoirs on the Snake River. The John Day Pool proposed drawdowns have major negative impacts to our local and regional economy. The Port of Morrow has six terminals that would require additional dredging if a drawdown were to occur.

Chairman, Congressman Doolittle
October 17, 1995
Page 2

The total cost to implement a drawdown on the John Day Pool are over $200 million and there appears to be no measurable benefit. I urge you to oppose any drawdown on the John Day Pool or the Snake River Reservoirs.

Sincerely,

Gary Neal

Gary Neal
General Manager

cc: Senator Hatfield
Congressman Defazio

PORT OF MORROW
MORROW COUNTY OREGON

WEST EXTENSION IRRIGATION DISTRICT

Phone & FAX (503)922-3814 P.O. Box 465 Irrigon, OR 97844

October 2, 1995

Representative John Doolittle
Water Committee Chairman
U.S. House of Representatives
Subcommittee on Water and Power

Re: John Day Pool Drawdown &
District Boundary Change

Dear Representative Doolittle:

This written testimony is being presented to the committee for their consideration.

West Extension Irrigation District has two major issues they would like to present to the committee for consideration. The first issue is the drawdown of the John Day pool on the Columbia River. The second issue is the District's proposed boundary change request that is currently pending with the Bureau of Reclamation.

JOHN DAY POOL DRAWDOWN: The District has two separate pump stations that would be affected should the river be lowered to the levels currently being considered. One station is located approximately one quarter mile from the confluence of the Umatilla River, the other station is located just west of the City of Irrigon. The station on the Umatilla River provides supplemental water to approximately 9,000 acres representing about 500 users. The station in Irrigon currently provides primary and supplemental water to an additional 900 acres serving about 200 users.

It is the District's understanding that if the river is lowered both of these stations would be modified as part of the mitigation process. While this would eliminate the major reconstruction costs it would not compensate the District for the additional pumping costs that would be created by the added lift. In our opinion this creates an unjustified waste of power. Power will become a more scarce and valuable commodity, as this drawdown will also result in the reduction of power generated by the dams. The District does not believe adequate scientific evidence has been provided to justify the additional cost that will be created for all residents and tax payers.

REQUESTED BOUNDARY CHANGE: Attached please find copies of some of the recent correspondence the District has had with the Bureau of Reclamation regarding the District's proposed boundary change and the delivery of water to lands the Bureau deems to be out of federally recognized boundaries. The supporting legal documents are available if you are interested in reviewing them. Also attached please find a copy of the "Request for Bureau of Reclamation Consent to Boundary Change" which was prepared and sent to the Bureau March 28, 1995. As you can see from the attached letters the Bureau will not provide any documents to support their position, however, they continue to ask the District to provide more and more information to dispute the Bureau's claims. In the past it has been the District's experience, when dealing with the Bureau, the more information provided to the Bureau the more they want and usually they manage to find some way of turning the provided information around to use it against the District. For that reason the District is very reluctant to provide the Bureau with any more detailed information.

Your consideration of the District's comments regarding the justification of the drawdown of the John Day Pool would be greatly appreciated by the District's patrons, management and Directors. In regards to the District's boundary change request and the on going problems with the Bureau of Reclamation, any assistance you can provide to facilitate the transfer of title of the project to the District upon repayment of the construction contract would also be greatly appreciated.

Sincerely,

William B. Loftin

William B. Loftin
Board Chairman

WEST EXTENSION IRRIGATION DISTRICT

Phone & FAX (503)922-3814 P.O. Box 465 Irrigon, OR 97844

March 28, 1995

Request for Bureau of Reclamation Consent to Boundary Change

Background. The West Extension Irrigation District (the "District") serves farmers in Morrow County and Umatilla County, Oregon near the towns of Umatilla, Irrigon and Boardman. Much of the original District area was flooded by the John Day Reservoir in the 1960's. In order to preserve the irrigated land base served by the District, water rights from the flooded lands were shifted to lands outside the federally recognized district boundaries. The District was chronically short of water to meet its needs, so in 1968 it developed a pump station to draw water from the Umatilla River near its mouth to supplement the water historically diverted at Three Mile Dam. The Bureau of Reclamation (the "Bureau") expressly consented in 1969 to use of the federally built canal system to deliver this water to lands inside and outside the federally recognized district boundaries.

Current Situation. The District asked the Bureau several years ago to consent to a change in the District boundaries to include all lands historically irrigated by the District. Approximately 3,000 acres would be added to the District, but because of the loss of land to the John Day Reservoir, there would be no net increase in District size.

The Bureau refuses to consent to the requested change unless the District:

1. Pays for whatever procedural steps and analysis are required under the National Environmental Policy Act ("NEPA") to approve the boundary change. This is estimated to cost $727,744 for all of the Umatilla Basin districts; and

2. Agrees to amend the existing 1954 Repayment Contract to increase its construction repayment obligations to account for the inclusion of "additional" lands.

The Bureau has told the District that unless it negotiates and signs a temporary contract for 1995 committing to pay initial NEPA costs of $30,000 and the $8.00 per acre for the alleged out of boundary lands the Bureau will order the District to cease water

deliveries to all lands the Bureau considers out of boundary.

The District intends to operate as it has in the past.

The Implications. The economy of Northeast Oregon depends on irrigated agriculture. Food processing plants located in the area because of the dependable supply of high value crops. Lamb Weston, NORPAC, Simplot and other food processors all depend on local growers irrigating with Umatilla River water to supply them with the crops they need to continue in business. The new U.S. Generating co-generation plant in Hermiston is being built at the Lamb Weston plant. PGE's new Coyote Springs plant will supply steam to Oregon Potato and Lamb Weston in Boardman. If water to growers is cut off it will have a devastating impact on the local economy.

The Bureau's unwillingness to live up to its contractual commitments and administer its contracts in good faith already has hurt irrigated agriculture in the Umatilla Basin. Farmers need financing, just like other businesses. Bankers look to the dependability of water supply when they make loans. Agricultural credit, as well as water, dries up when the Bureau even threatens cutoffs. Here the Bureau has gone so far as to repudiate deals it made years ago. (See attached correspondence). How can anyone do business with such an unreliable and unbusinesslike "partner"?

The Merits. The District has presented extensive legal and factual materials to the Bureau demonstrating that the Bureau:

1. Agreed to the transfer of water rights to new lands when the John Day Reservoir flooded much of the original District area.

2. Agreed to the use of federal facilities to deliver nonfederal water to out of boundary lands in 1969.

3. Entered into a conjunctive use contract implementing Phase 1 of the Umatilla Basin Project that does not restrict delivery of the water to lands within the District.

4. Already concluded that continued irrigation of the out of boundary lands will have no impact whatsoever on Umatilla River flows.

The Bureau has no legitimate reason to refuse to consent to the requested boundary change.

The Commissioner of Reclamation recently urged irrigation districts to join new partnerships with the Bureau to pursue important national objectives. The West Extension Irrigation District has taken action already with the Phase 1 water exchange under the Umatilla Basin Project Act to benefit fish runs in the Umatilla River. Partners must act in good faith and not repudiate prior agreements. The stability of the agricultural economy depends on it.

The District is currently in the process of pursuing the possibility of paying off the balance of their construction contract. If the District does pay off the construction contract, we would appreciate your assistance in initiating the necessary actions in Congress to have the title to the project works turned over to the District. According to our contract "Title to the project works shall remain in the United States until otherwise provide by the Congress." It is the District's hopes, this action would eliminate the restrictions the Bureau is trying to impose on the Districts in the Umatilla Basin.

If you have any questions regarding the enclosed information or any other aspect of the problems the Districts are encountering with the Bureau, please feel free to contact me at the above stated phone number.

Sincerely,

Leann Rea

Leann Rea
General Manager

WEST EXTENSION IRRIGATION DISTRICT

Phone & FAX (503)922-3814 P.O. Box 465 Irrigon, OR 97844

February 21, 1995

Mr. James V. Cole
Manager, Upper Columbia Area
U.S. Department of the Interior
Bureau of Reclamation
1917 Marsh Road
P.O. Box 1749
Yakima, WA 98907-1749

Dear Mr. Cole:

In response to your letter of January 30, 1995 the West Extension Irrigation District (the "District") has reviewed its files and searched the files of the U.S. Army Corps of Engineers for records supporting our position that the Bureau of Reclamation (the "Bureau") already has approved our boundary change request through its past actions. A legal memorandum with supporting documents attached is enclosed to support our position.

Many documents that may relate to these water deliveries and the understanding of the Bureau and the District regarding the boundary change consent requirement in the District's Repayment Contract with the United States (Contract No. 14-06-W-68) (the "1954 Contract") are in the Bureau's possession. We are certain that the Bureau's records and those of the Corps of Engineers contain additional evidence supporting the District's position. Representatives of the Umatilla irrigation districts have attempted to review the Bureau's records regarding our 1954 Contract and other contracts in the basin in the past and the Bureau has refused to disclose many key documents. Whether or not the Bureau's refusal to allow document review violates Article 24 (b) of the 1954 Contract, it handicaps our effort to demonstrate past Bureau approval of all water deliveries made by the District.

Let me summarize what we understand the Bureau's position to be regarding continue water service to lands the Bureau alleges to be out of Bureau-approved boundaries. We understand that the Bureau will not formally approve our boundary expansion to include lands irrigated as of October 1, 1988 unless: (1) we agree to pay for whatever procedural steps and analysis are required under the National Environmental Policy Act ("NEPA") and take whatever actions are necessary to mitigate for the impacts of irrigating the out of boundary lands; and (2) we agree to amend our existing 1954 Repayment Contract to increase our construction repayment obligations. We also understand that the Bureau will order us to

cease providing irrigation water to these lands immediately unless we agree to sign an interim contract for 1995 pursuant to which we would pay an additional $ 8.00 per acre for all of the alleged out of boundary lands over and above our obligations under the 1954 Contract. Please advise me as soon as possible if this statement of the Bureau's position is incorrect in any way.

On behalf of the District, let me also state our response to the Bureau. The District submitted its request for approval of its boundary change in the utmost good faith. We thought, perhaps naively, that the Bureau would continue to work with us, as they did on the development and implementation of the first phase of the Umatilla Basin Project. We thought that our request for formal approval of our boundary change was simply a technical contract compliance matter that could be taken care of easily, especially since it was intended by Congress when they passed the Umatilla Basin Project Act. The District cooperated in the NEPA scoping exercise because we thought it would result in a prompt decision on our boundary change request, fully expecting a decision to be made on the basis of an environmental assessment, at most. We pursued the NEPA process even though we firmly believe that continued irrigation of our out of boundary lands was fully and completely addressed and analyzed in the Final Environmental Impact Statement ("FEIS") on the Umatilla Basin Project and that the Bureau had long since agreed to out of boundary deliveries.

The Board of Directors was shocked when it learned that the Bureau intends to condition its consent to our boundary change on amendment of our 1954 Contract, a contract expressly approved by Congress. We believe the Bureau has breached its obligations under the Contract by refusing to approve the boundary change in a timely fashion consistent with the terms of the 1954 Contract itself. The intent of the consent requirement is clear. It was included in the 1954 Contract to assure that lands served with project water were subject to assessment and lien foreclosure by the District and to assure that there was sufficient capacity in the system to serve the additional lands. Since these lands have paid their assessments regularly and since the system has run for years while serving them, there is no legitimate reason under the terms of the contract for you to withhold your consent. You have no discretion to do so and NEPA does not provide you with discretion you do not have under the contract.

Your assertion that you can order the District to cease deliveries to lands you consider to be outside the District's boundaries is unsupportable under the 1954 Contract. The United States can only stop deliveries for non-payment. Even if the District were in breach of the contract provision limiting deliveries to lands within the District, which we deny, neither the 1954 Contract, nor general reclamation law, nor the common law allow you to shut off deliveries as a remedy for such a breach. The District recognizes its obligation to deliver water to landowners with state water rights served by our system. Apparently the Bureau no longer believes it is bound to provide such service. If you order the

District to cease deliveries, the District would expect you to fully indemnify the District against any claims made against the District by affected landowners.

The District urges the Bureau to educate itself about the facts and law pertaining to our request that you approve our boundary change. Let me review the principle points made in the enclosed analysis:

1. 1994 Conjunctive Use Contract. The 1994 conjunctive use contract contains no restriction on out of boundary deliveries, nor does it incorporate the terms and conditions of the 1954 Contract. Water provided under the 1994 contract can be delivered without regard to the District's boundaries.

2. Non-Federal Water Supply. The 1954 Contract restriction on deliveries outside District boundaries only applies to water supplied through federally constructed works (Three Mile Dam, the main canal, and laterals and drains constructed by the United States) under the terms of the 1954 Contract itself. Water acquired by the District before the federal project was developed or after the federal project (the 1893, 1906, 1962, 1968 and 1981 water rights and the Columbia River and Umatilla River pumping stations) can be delivered by the District without regard to Bureau-approved District boundaries. The Bureau already consented to use of federal facilities for these deliveries.

3. John Day Reservoir. The Bureau knew about the impact of the John Day Reservoir on the District and was unable to take action to protect the District's interest by obtaining reimbursement from the Corps of Engineers for the repayment obligations of the flooded lands. The Bureau knew that in order to meet its obligations to protect the United States water rights, the District would have to irrigate other lands with the water that had gone to the flooded lands. The Corps of Engineers planning documents for the John Day Reservoir anticipated that this would occur.

4. State Water Right Proceedings. The Bureau failed to participate in state water rights proceedings affecting the water rights to the project, instead relying on the District to review and approve transfer requests. Over 400 acres of the lands to be included in the District boundaries were subject to formal transfers of primary and supplemental water rights in accordance with state law. Public notice of the transfers was provided and no injury determinations were made. The Bureau is barred from blocking deliveries to these lands since it could have protested the transfers in accordance with state law and did not do so.

5. Repayment. The Bureau accepted full repayment of construction charges on approximately 900 acres of the lands now at issue. By accepting repayment, the Bureau consented to water delivery to these lands and cannot retract its consent years later.

The Bureau has already concluded in the FEIS and the 1993

Reclassification Report that irrigation of the out of boundary lands will not affect streamflows in the Umatilla River. There is no environmental justification for refusing to approve the District's boundary change request. There is also no justification for delaying, conditioning or refusing approval of the boundary change under the terms of the 1954 Contract.

Rather than continuing discussions about an interim contract for 1995, the District requests prompt approval of its boundary change in accordance with the terms and conditions of the 1954 Contract. The District will consider any failure to do so to be a breach of that agreement by the United States.

Sincerely yours,

William B. Loftin, Chairman
West Extension Irrigation District

PROCLAMATION BEFORE THE STATE GOVERNORS OF OREGON AND WASHINGTON

Acting by and through their elected officials and representatives, the communities of the Lower Columbia River area bring before Governors Barbara Roberts and Michael Lowery a proclamation concerning the management of the Lower Columbia River reservoirs for salmon recovery planning.

Where as, numerous scientific reports and studies prepared by university, government, and industry scientists reveal that a John Day Pool drawdown would offer no measurable biological benefits for migrating salmon, or perhaps create negative biological impacts;

Where as, biological impact assessments of a John Day Pool Drawdown reveal that substantial harm would be inflicted on the resident fish and wildlife resources of the area;

Where as, economic evaluations of a John Day Pool drawdown reveal that such an action would be among the least cost-effective measures that could be pursued by the Pacific Northwest states to recover or enhance salmon runs; and create economic hardships for local residents;

Where as, the actions of the Northwest Power Planning Council reveal that little concern exists by this body for proposing salmon recovery measures based on sound science and least-cost planning requirements; or that the Council has adequately consulted with or acknowledged the legitimate concerns and wishes of citizens living within the Columbia River Basin Drainage;

Be it proclaimed that, the communities of the Lower Columbia River area strongly oppose any drawdown actions on the John Day Pool below existing and conventional operating ranges: strongly oppose actions by the states of Oregon and Washington and their respective administrative agencies, to further any kind of drawdown measures: and strongly recommend to the state governors that they immediately contact the federal hydro project agency heads and request that all further studies or actions leading to a drawdown be immediately halted.

WE THE UNDERSIGNED, pledge to support and deliver this proclamation,

William Brown
Mayor, City of Boardman

David McAuslin
Mayor, City of Echo

Frank Harkenrider
Mayor, City of Hermiston

Don Eppenbach
Mayor, City of Irrigon

Larry Lehman
Manager, City of Pendelton

Jim Light
Mayor, City of Stanfield

Fred Ericksen
Mayor, City of Arlington

Allen Burka
Umatilla City Council

Ray Barrett
Port of Arlington

Gary Neal
Port of Morrow

Kim Puzey
Port of Umatilla

Bob Bennet
Port of Benton

Donald Clayhold
Tri-City Industrial Dev. Council

Bob Graves
Benton County PUD

Jim Toomey
Port of Pasco

Marvin Kenney
Port of Kennewick

Steve Elderige
Umatilla Electric Cooperative

Tom Gilleese
Hermiston Development Corp.

WE THE UNDERSIGNED, pledge to support and deliver this proclamation,

Robert A Duke
Benton County Commr.

Joseph E Burns

[illegible]
Hermiston 2000

Ray Barrett
Port of Arlington

Jim Light

Bob Ehmann
City Council, Pendleton

Richard Kron
Mayor Huntington
ORB

Barbara Roberts, Governor of Oregon
Michael Lowry, Governor of Washington

April 28, 1994

Dear Governors Roberts and Lowry:

The mayors and representatives of 12 cities of this region of the Columbia and Snake River basins met in Hermiston, Oregon to urge you to reject any proposal and/or plan to lower any reservoir in the Columbia/Snake River system as a means of attempting to speed the downstream migration of salmonid smolts. Although this is a popular concept among certain officials and some environmental activists, we are convinced by existing studies conducted by Corps of Engineers biologists, and similar studies by independent consultants, that this proposal is not founded on any credible scientific evidence that it will produce any positive results. In fact such a proposal, as it pertained to the John Day Reservoir especially, was rejected by the National Marine Fishery Service Snake River Salmon Recovery Team, headed by Dr. Don Bevan, in their recommendations of October 1993. **"...No drawdown of John Day Reservoir; the relative amount of proposed drawdown is minimal, biological effects are expected to be too small to be measurable, and the Team does not favor diversion of dollars and manpower away from other salmon recovery needs."**

Results of the 1992 drawdown of the Lower Granite Pool are recorded. The Mayor of Huntington, OR., testified that the drawdown of the pool behind Brownlee Dam was every bit as devastating to that community as the effect of the experiment at the Lewiston/Clarkston area. Based strictly on economic impacts, drawdown proposals are the least effective considerations for salmon run enhancement and the most costly from the standpoint of wildlife protection and continued viability of the way of life which has developed over the past half-century.

To take the steps proposed in the drawdown of the reservoirs of John Day and Lower Granite is to declare that a 465 mile long water highway formed by the eight mainstem dams on the Snake and Columbia Rivers is of no value and the loss of thousands megawatts of power production will have no negative effects on the Pacific Northwest. We, contrarily, believe that the philosophy of our fathers is still valid and that people still come first when considering major developmental changes. The proclamation attached emphasizes this stand.

Sincerely,

Donald V. Eppenbach
Mayor City of Irrigon
Chair, Conference of Mayors

cc: Enclosure

PROCLAMATION

to the

National Marine Fisheries Service
The Northwest Power Planning Council
Governor John Kitzhaber, Oregon State

The Cities of Hermiston, Echo, Stanfield, Umatilla, Irrigon and Boardman adopt the following proclamation concerning the proposed Snake River Salmon Recovery Plan drafted by the National Marine Fisheries Service, as well as related actions by the Northwest Power Planning Council and the executive agencies of the State of Oregon.

WHEREAS, the National Marine Fisheries Service has presented a Snake River Salmon Recovery Plan that fails to identify directly the benefits gained by the key measures contained within their Plan, or to prioritize such measures according to effectiveness; and the total costs associated with the full and complete implementation of the Plan will likely exceed annually several hundreds of millions of dollars;

WHEREAS, the National Marine Fisheries Services's directive for a John Day Pool drawdown is inconsistent with the decision path recommended for reservoir drawdown actions within the agency's Recovery Plan; numerous scientific reports and studies prepared by university, government and industry scientists reveal that a John Day Pool drawdown would offer no measurable biological benefits for migrating salmon, or perhaps create negative biological impacts; and biological impact assessments of a John Day Pool drawdown reveal that substantial harm would be inflicted on the resident fish and wildlife resources of the area;

WHEREAS, unjustified Snake-Columbia River reservoir drawdowns and related flow enhancement actions would create an unwarranted economic burden on agricultural operators and agricultural-dependent communities within the state, forcing higher costs on irrigators and state residents for increased electric power costs, and increased taxes to cover the costs for drawdown mitigation;

WHEREAS, recovery plans have been prepared and recommended by industry and university researchers that would minimize the economic costs of salmon recovery while at the same time maximizing the likely salmon benefits; and that the National Marine Fisheries Service and the Northwest Power Planning Council have failed to acknowledge and address fully recovery plans presented before them that stress biological- and cost-effectiveness;

Proclamation

- 2 -

WHEREAS, the actions of the National Marine Fisheries Service and the Northwest Power Planning Council reveal that little concern exists by these bodies for proposing salmon recovery measures based on the dominant weight of scientific and technical investigations and least-cost planning requirements; or that the Fisheries Service or Council have adequately consulted with or acknowledged the legitimate concerns and wishes of citizens and their elected official living within the Columbia River Basin drainage;

NOW THEREFORE, the Cities of Hermiston, Echo, Stanfield, Umatilla, Irrigon and Boardman strongly oppose implementation of measures under the National Marine Fisheries Service Salmon Recovery Plan that have not been subjected to a formal cost-effectiveness review; strongly oppose any drawdown action on the John Day Pool lowering the reservoir below existing or conventional operating ranges or further drawdown actions on the Lower Snake River reservoirs; strongly oppose the implementation of any federal or state agency actions that call upon the farm operators and businesses of Oregon to be subjected to negative economic impacts when the salmon benefits of such measures cannot be demonstrated with reasonable and practical assurances; and the cities strongly support alternative recovery plans that rely on biological- and cost-effectiveness criteria to identify high quality salmon recovery measures for the dollars spent or costs incurred by the state's citizens.

DATED this 1st day of May, 1995.

Frank J. Harkenrider
Mayor of Hermiston

Dave McAuslin
Mayor of Echo

Tom McCann
Mayor of Stanfield

George Hash
Mayor of Umatilla

Don Eppenbach
Mayor of Irrigon

Bill Brown
Mayor of Boardman

Umatilla County
Board of County Commissioners

Commissioners
Glenn Youngman
503-278-6202

Emile Holeman
503-278-6203

Bill Hansell
503-278-6201

Office Manager
Marcia Wells
503-278-6204

County Counsel
William C. Jones II
503-278-6208

Budget Officer
Bruce Peet
503-278-6209

Director of Human Resources
James R. Barrow
503-278-6208

October 11, 1995

Subcommittee on Water and Power
Resources
Committee on Resources
U.S. House of Representatives
1337 Longworth H.O.B.
Washington, DC 20515

Dear Subcommittee Members:

The Umatilla County Board of Commissioners has gone on record supporting H.R. 2392 which amends the Umatilla Basin Project Act and establishes boundaries for irrigation districts in the Umatilla Basin.

We believe that the boundary changes are appropriate for the following reasons:

1. It directs the change of boundaries instead of being discretionary: a) the Bureau has not been very fast to change the boundaries, b) first petitioned in 1986 and still no action by the Bureau.

2. Does not allow any more water to be used than Federal contracts allow or State Water law allow

3. Does not allow any more acres to be irrigated with Federal water than were receiving water prior to October 1, 1988

4. Does not take any water from, or infringe on, Indian Treaty water rights

5. Within the parameters of Oregon Water Law

6. Does not cost the Federal Government any money, in fact will save money

7. Will save the districts an estimated $1,000,000.00 to do NEPA compliance

8. Reduce the Bureau's ability to demand extra money or grants of water from the districts

216 S.E. 4th Street - Pendleton, Oregon 97801 • Ph: 503-276-7111 - Fx: 503-278-5463

9. Stabilize the irrigators farming plans. Uncertainties will be eliminated: a) four years with water cut offs, or no interim contract for water deliveries until after McKay usage was started; b) stabilize the districts budgeting and assessment process, c) save the districts money and productivity time. Many meetings and nothing was accomplished. This would be eliminated.

10. The Districts would still honor all interim agreements and provide the interim water for fish enhancement.

11. This Bill would implement the intent of one portion of the UBPA.

It is for the above reasons we support amending House Bill 2392 and ask for your favorable consideration.

Sincerely,

UMATILLA COUNTY
BOARD OF COMMISSIONERS

Glenn Youngman

Glenn Youngman, Chairman

GY:mw

cc: Mr. Robert Reuter

21-090 98

Aerial Forest Management Foundation
P.O. Box 95
Canby, Oregon 97013
(503) 678-2665

November 17, 1995

U.S. House of Representatives
Committee on Resources
Mr. Duane Gibson
c/o FAX #: 202-225-3564

Re: Congressional Task Force on Timber Salvage and Forest Health Hearing on November 4, 1995, in Medford, Oregon.

Dear Mr. Gibson:

At the end of the above referenced hearing, Congressman Cooley requested comments or clarifying statements be sent to you to be included in the proceedings. In response to his request I submit the following:

1. A copy of a letter to American Forest and Paper Association signed by Max Merlich, President of the Helicopter Loggers Association, that more clearly and completely discusses the current situation relative to the utilization of helicopters on timber salvage activities. Several individuals testifying referred to the misuse of helicopters without presenting a complete perspective.

2. It was apparent from discussion at the hearing that the congressional delegates were not aware of the agencies' long standing practice of taking credit for sales offered but not sold because they were not viable offerings. Agencies that do not do the job properly should be held accountable and some penalties assessed instead of being allowed to continue to misrepresent accomplishments. There is a tremendous waste of taxpayer's money and a negative effect on forest health when non-economically viable sales continue to be offered.

3. Russ McKinley referred to the Silver Fire Complex salvage effort on the Siskiyou National Forest as a good example of successful salvage activities, pointing out that ongoing monitoring studies indicate no detrimental environmental impact on forest health. He neglected to point out or mention the fact that 80% of the volume was harvested by helicopter and it is a prime example of the proper application of the helicopter logging system.

Mr. Duane Gibson
U.S. House of Representatives
November 17, 1995
Page two

I respectfully request that the attached letter and the above comments be included in the proceedings of the above referenced hearing.

Sincerely,

AERIAL FOREST MANAGEMENT FOUNDATION

By: Steve Martin
Steve Martin, Managing Director

SM:hld
Attachment

HELICOPTER LOGGERS ASSOCIATION

P.O. Box 206
Wilsonville, OR 97070
(503) 678-1222

October 2, 1995

American Forest & Paper Association
Attn: Doug Crandall and Mark Rentz
1111 19th Street, NW, Suite 800
Washington, DC 20036

Dear Mr. Crandall and Mr. Rentz:

A significant number of timber sales that contain helicopter logging have not sold recently . We would like to offer our assessment of the situation from the Helicopter Loggers Association (HLA).

The helicopter has always made sense,environmentally, operationally and economically when selectively removing a forest overstory.

Helicopter logging makes sense in selective logging in inaccessible and sensitive areas as well as for salvage cuts that are well planned with realistic marking. Salvage logging on large burns, blowdown and insect salvage have always made sense when done in a timely and careful manner.

Now it seems, however, that at least one year of study is taking place prior to any fire salvage operation. This reduces the value of the timber significantly, in many cases turning sawlogs into low value pulp. The agencies then decide they have a future slash problem and requires flying all trees with 6" DBH and larger, tops, limbs and all to the landing. This has imposed a huge cost burden on helicopter logging while at the same time reducing the average value of the products to the point where the sale cannot support itself. At the same time, on the same sale, wildlife people require leaving numerous snags standing on each acre, causing a major safety hazard to logging crews, and a future slash problem. The wildlife people and the fire people are at clear cross purposes. The logger is put in the middle, needing work, but finding it dangerous and economically disastrous.

On the general subject of forest health, in timber sales using helicopters we are seeing a different problem. The new preferred method of silviculture is understory removal. In many of these jobs the helicopter is required to try to pull pulp and other low value products out from under an old growth canopy. This is very slow, very dangerous, and very costly. The volume is marked in such a manner that it is not possible to get efficient loads for the helicopter. These factors coupled with the requirements of flying the tops and limbs also have made the physical and economic practicality of these sales impossible. The silvicultural benefit to the stand without more release for growth is also highly questionable. These factors are being decided unilaterally, by people with inadequate experience in aerial harvesting.

A large problem has developed in forest thinning. In some cases, true thinning of a second growth stand takes place while in other cases the understory removal mentioned above is planned. The volume per acre designated for cutting is so small and the residual stand so thick that it is often not possible to fall the trees. Then it is a very slow, dangerous and costly operation to lift the trees, often with tops and limbs still attached, out of the stand. The silvicultural benefit to the stand without more release for growth is highly questionable.

We have seen increasing misuse of the helicopter logging system where other systems would do an acceptable job. We feel perplexed by this since in many cases the ground has been logged before by tractors and roads already exist. We do not condone logging ground with helicopters unless there is a valid reason. We understand that soils and damage to the residual stand from conventional equipment is a valid concern. In these cases where conventional equipment is not allowed or cannot do an acceptable job, we feel the helicopter thinning/partial cutting operation can be made properly economical and safe through realistic marking. Savings can come by allowing mechanical felling and bunching with either a cut-to-length system or a feller-buncher. This allows significant cost savings on the felling and bucking, considerable savings on the flying of bunched loads versus single logs, and will often produce a better result to the residual stand. It could overcome the high cost of flying logs that weigh twenty pounds per board foot. The machine can walk on the slash it creates, thus negating the soil problem and providing material to recycle into the forest floor. Safety is enhanced and slash work can more easily be accomplished. We have seen many areas where this could be employed on federal land. We are doing it on private land now.

We believe the helicopter is one of the most flexible and effective tools available to a forest manager. The fact that our services are employed more and more on private land should be noted. However, if the helicopter is called on to remove low value products exclusively through misapplications of the system, then nobody benefits. In most cases a few changes through competent planning can be made to a project with an acceptable job result at a cost that allows a profit for all parties. However, we are finding inflexibility is the rule with the agencies. All the biologists, hydrologists, archaeologists and other special field people each have to have 100% of their needs met. This results in a job so fragmented by operating restrictions that the original goal is often lost sight of and the results become questionable. Inadequate experience and training of sale administrators results in an impractical approach to getting the job done and poor regard for the silvicultural treatment of the forest.

Many long term environmental protection requirements are guessed at by agency personnel rather than required by law or forest health improvement. The practice of "trade offs" of roadless areas by the selection of the helicopter logging system solely to minimize the threat of litigation from activist environmental groups is not condoned by the HLA.

HLA has given financial support for several years toward training and education of agency personnel. Many of them took the buyout option and are no longer around. Neither the Forest Service or the Bureau of Land Management have responded with cooperative funding to assist in an essential training program with continuity.

Not all jobs requiring helicopter logging are poorly laid out; some have sold at a premium stumpage price. We are requesting that the agencies review their programs and to reevaluate those factors that control the quality of the sales. We continue to offer our help to get this job done.

The above discussion supports our conclusion that the agencies definitely lack the necessary depth in sale preparation and administration to adequately carry out the job mandated by Congress.

There have been persistent references both from industry and the agencies about the lack of availability of aircraft and too high costs related to helicopter logging to carry out the salvage effort. The comments above directly relate to unnecessarily increased costs and point out why prudent, experienced operators have been forced to look toward off-shore and private lands for viable and predictable work opportunities.

Sincerely,

HELICOPTER LOGGERS ASSOCIATION

By: _____
Max Merrich, President
MM:hld

cc: Members of Congress
Forestry Associations

WaterWatch
RIVERS NEED WATER

October 26, 1995

Subcommittee on Water and Power Resources
Committee on Resources
U.S. House of Representatives
Washington, DC 20515

re: HR 2392--statement for the record of October 4 hearing in Hermiston, Oregon

Dear Chairman Doolittle and members of the Committee:

WaterWatch offered testimony at a hearing of the subcommittee in Hermiston, Oregon on October 4. Our statement did not address HR 2392, Congressman Cooley's water spreading legislation, because we had not seen the bill until shortly before the hearing. We provide this letter for the record of that hearing.

Congressman Cooley's bill would instantly legalize "water spreading"--the unauthorized use of federally subsidized reclamation project water--in Oregon's Umatilla River Basin. The bill would expand the boundaries of four irrigation districts without the environmental review required by NEPA, the National Environmental Policy Act. Currently, the Bureau of Reclamation is complying with NEPA by requiring an Environmental Impact Statement on the districts' boundary expansion request.

HR 2392 would waive an important environmental law to benefit certain irrigators who haven't played by the rules. (It would rely on the Umatilla Basin exchange project's 1988 EIS, which specifically *did not* consider boundary expansion.) The irrigation districts support the bill because they don't want any review of water spreading impacts, and they especially don't want to pay for an EIS. We view HR 2392 as simply an unjustified special-interest exemption from environmental laws. But we have even stronger reasons for opposing HR 2392:

> **It ignores impacts on fish and tribal rights.** The current NEPA process will produce a hydrologic study of the Umatilla Basin to provide a sound scientific basis for a decision on boundary expansion. It will also analyze the effects of alternative decisions on the Umatilla River and its fish, but also the effects on the Umatilla Tribes, irrigators and local communities. Thus, NEPA offers a science-based process that considers all the key interests. In contrast, HR 2392 offers a political process that considers only the interests of four irrigation districts.

> **It ignores deals the irrigators have already made.** Three of the four Umatilla districts have formally agreed that boundary expansion will require NEPA compliance. The districts signed negotiated deals to that effect in 1992 and 1993 which have provided important benefits for the entire Umatilla Basin, including the water rights needed for the exchange project. But today, the irrigators back HR 2392, which would wipe out a key element of these agreements.

WaterWatch of Oregon • 213 Southwest Ash, Suite 208 • Portland, OR 97204
Phone: (503) 295-4039 Fax: (503) 295-2791 Email: watrwtch@teleport.com

> **It would kill off cooperative efforts.** HR 2392 would also undermine some very positive, cooperative efforts which have recently had good results in the Umatilla Basin. This summer, the irrigators, the Bureau, the Umatilla Tribes and WaterWatch succeeded in negotiating temporary contracts and water rights for both irrigators and fish. The districts also committed their share of funding for the Umatilla Basin hydrologic study, which will provide a basis for the EIS and a permanent resolution of the water spreading issue. Just as these negotiated efforts are beginning to work in the Umatilla Basin, the irrigators and Congressman Cooley propose to short-circuit them.

HR 2392 would amend the Umatilla Basin Project Act, which everyone in the Umatilla Basin hails as a model of cooperation between irrigation and tribal interests. That local consensus, combined with the strong leadership of Senator Mark Hatfield, made the project a reality. But HR 2392 is not a consensus approach (see attached page 1 articles from the *East Oregonian* and the Hermiston *Herald*). It is simply a special-interest political fix for selected irrigators. These irrigators condemn the Bureau for making policy from Washington, DC, but the Cooley bill is just the same--an attempt to solve the Umatilla's water issues from inside the Beltway. Given that HR 2392 will *increase* controversy in the basin, and will leave fundamental problems unresolved, WaterWatch doubts that the bill offers a stable long-term solution.

WaterWatch strongly urges you to support cooperative solutions to Umatilla Basin water issues, and oppose HR 2392. If hearings are held on the bill, we request the opportunity to testify.

Sincerely,

Reed D. Benson
Reclamation Issues Director

xc: Senator Mark Hatfield
Congressman Don Young
Congressman George Miller
Congressman Peter DeFazio
Congressman Wes Cooley
Chairman Donald Sampson
Commissioner Eluid Martinez
Regional Director John Keys
Umatilla Basin Irrigation Districts

THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

100 Justice Building
1162 Court Street NE
Salem, Oregon 97310
FAX: (503) 378-3802
TDD: (503) 378-5938
Telephone: (503) 378-6986

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 8, 1995

U.S. House of Representatives
Committee on Resources
Room H2-550, Ford House Office Building
Washington, DC 20515

Re: Correction to testimony before Committee October 4, 1995

Dear Committee Members:

I would like to correct testimony I gave to the Committee on October 4 with respect to the fee schedule the State of Oregon charges for applications for new water rights. That fee schedule is set forth in ORS 536.050, and was recently changed by the Oregon Legislature. Enclosed is a copy of the statute which accurately identifies what fees apply to what uses. Could you be so kind as to enter this letter into the record as a correction of my remarks to the Committee which misstated those fees.

Also enclosed is the corrected version of my oral remarks.

Thank you.

Sincerely,

Stephen Sanders

Stephen E.A. Sanders
Assistant Attorney General
Natural Resources Section

SEA:jmf/0201.LET
Enclosures

CHAPTER 416

AN ACT SB 674

Relating to water rights permitting; creating new provisions; amending ORS 536.050, 537.020, 537.040, 537.130, 537.135, 537.139, 537.140, 537.145, 537.150, 537.160, 537.170, 537.190, 537.211, 537.230, 537.240, 537.250, 537.260, 537.289, 537.332, 537.343, 537.352, 537.615, 537.620, 537.622, 537.625, 537.630, 540.537, 543.230, 543.255 and 543.265 and section 4, chapter 595, Oregon Laws 1993, section 2, chapter 218, Oregon Laws 1995 (Enrolled House Bill 2431), and sections 2 and 3, chapter 473, Oregon Laws 1995 (Enrolled House Bill 2746); repealing ORS 537.180; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 536.050 is amended to read:

536.050. (1) Except as provided in subsection (2) of this section, the following fees shall be collected by the Water Resources Department in advance:

(a) For examining an application for permit to appropriate water:

(A) For power purposes, the fees required under ORS 543.280.

(B) For all other purposes, $200.

(b) For filing and recording a permit to appropriate water:

(A) For irrigation purposes, $100 for the first 10 acres, or fraction thereof, to be irrigated and $2 for each acre in excess of 10 acres.

(B) For storage, a minimum fee of $100 for the first 50 acre-feet and 25 cents for each acre-foot in excess of 50.

(C) For domestic purposes, $125 for the first second-foot or fraction thereof and $60 for each additional second-foot.

(D) For any other purpose, including but not limited to municipal, $100 for the first second-foot or fraction thereof and $50 for each additional second-foot.

(c) For filing or recording any other water right instrument, $10 for the first page and $5 for each additional page.

(d) For copying records in the department, $2 for the first page and 50 cents for each additional page.

(e) For certifying to copies, documents, records, or maps, $10 for each certificate.

(f) For blueprint copy of any map or drawing, the actual cost of the work.

(g) For examining an application for approval of a change in point of diversion, or a change in place of use or change in use of water, $50.

(h) For filing each application to transfer water rights for irrigation from one tract of land to another or to transfer to irrigation use from any other use, a minimum fee of $30 per receiving owner for the first 10 acres or fraction thereof and $1 for each acre in excess of 10 acres, such fees to be based upon the number of acres to which the water right is transferred.

(i) For filing each application for change in point of diversion, $35.

(j) For filing each application for a change in the use or place of use theretofore made of the water where the use is other than irrigation, $100.

(k) For submitting a protest under section 11 or 25 of this 1995 Act, $200, reduced by the amount of any protest previously paid toward the same application and for filing any other protest with the department, $25.

(L) For filing an application for extension of time within which irrigation or other works shall be completed or the right perfected, $100.

(m) For examining an application for an exchange of water, $250.

(n) For a limited license under ORS 537.143, the fee established by rule by the Water Resources Commission.

(o) For filing, examining and certifying a petition under ORS 541.329, $250 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section.

(p) For requesting standing under section 11 (5) or 25 (5) of this 1995 Act, $50.

(q) For participating in a contested case proceeding under ORS 537.170 (2) or 537.622 (2), $150.

(r) Except for an applicant, for obtaining a copy of both a proposed final order and a copy of a final order for a water right application under ORS 537.140 to 537.250 or 537.505 to 537.795, $10.

(2) Notwithstanding the fees established under subsection (1) of this section, the commission may by rule establish examination and permit fees lower than those under subsection (1) of this section for:

(a) The right to appropriate water for a storage project of five acre-feet or less; or

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area. As used in this paragraph, "riparian area" has the meaning given that term in ORS 541.350.

(3) Notwithstanding subsections (4) and (5) of this section, if the Water Resources Director determines a refund of a fee paid under this section is appropriate in the interest of fairness to the public or necessary to correct an error of the department, the director may refund all or part of a fee paid to the department.

[*(3)*] **(4)** Except as provided in subsection [*(4)*] **(5)** of this section, all moneys received under subsection (1) of this section shall be deposited in the Water Resources Department Operating Account and credited to the Water Resources Department. Such moneys are continuously appropriated to the Water Resources Department to pay the department's expenses in administering and enforcing the provisions of ORS chapters 536 to 543.

[*(4)*] **(5)** All fees received under subsection (1)(a)(A) of this section shall be paid to the Water Resources Department Hydroelectric Fund established in ORS 536.015.

THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

100 Justice Building
1162 Court Street NE
Salem, Oregon 97310
FAX: (503) 378-3802
TDD: (503) 378-5938
Telephone: (503) 378-6986

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: October 4, 1995

TO: U.S. House of Representatives
Subcommittee on Water and Power Resources

FROM: Stephen E.A. Sanders
Assistant Attorney General
Oregon Department of Justice

SUBJECT: Federal Government Actions Affecting Oregonian's Water Rights

At the risk of repeating the obvious, I believe it is important to recall what a water right is. A water right, under the prior appropriation doctrine, is the right, in times of shortage, to require all persons with junior priority dates to cease using water until all uses with senior priority dates on the same source of water have been satisfied. The rule in its simplest expression is: "First in time, first in right." Because the value of a water right is primarily based on its priority date relative to other users of the same source, all users must be subject to, and play by essentially the same rules. As the United States Supreme Court noted in its analysis of Oregon's adjudication system in 1916, in the area of water rights, every person's water rights are inextricably intertwined with every other person's water rights on the same source. Consequently, the effectiveness of a water rights system necessarily requires that all persons claiming water rights are subject to the same system. While the citizens of the state, state and federal agencies and Indian tribes and irrigation districts all have vital interests in water rights, there is only one system in which the relative rights of these diverse interests can be managed: That is the state's system, exercised through the authority of the Oregon Water Resources Department and Commission. There is no comparable federal or tribal system with authority over all users on a source.

Until all water rights have been evaluated against all other claimants on a source, typically done through an adjudication of relative rights, the state cannot regulate either in favor of or against those rights. In other words, a person who holds an unadjudicated right will not be shut off in favor of one who claims to hold a senior right, nor will the state shut off one who would appear to hold a junior right in favor of the unadjudicated right. That is because until rights have been established in a system that allows for scrutiny of the claim and a legal determination of the claim's nature and scope, there is no legally conclusive evidence of where the right fits in the priority scheme. This is particularly troubling for

those who hold the oldest rights on a system, if they have not been adjudicated yet, since ultimately those rights are entitled to shut off all rights established subsequent to the unadjudicated right. By and large, many of the very oldest rights are held by the tribes and federal agencies. Some tribes hold "time immemorial" rights to water for fishing purposes. Federal agencies hold priority dates based on the date the land was set aside from the public domain for some specialized purpose, like a national forest, a national park or an Indian reservation.

It is particularly troubling (and especially short sighted) then that federal agencies consistently try to block the adjudication of their reserved and other rights by the states.. In Oregon, we have spent since 1975 trying to establish the state's authority to adjudicate the federal and tribal claims in the Klamath Basin. The case is still pending before the United States Supreme Court on a request by the Klamath Tribe to have the Court review a Ninth Circuit Court of Appeals opinion that determined Oregon could adjudicate those rights. We were particularly pleased to see that the United States has now agreed that the Court should not review the case, but has recognized that their are adequate safeguards to protect federal and tribal interests determined in the adjudication. Aside from the time that could have been spent actually adjudicating these federal and private rights in the Klamath Basin, the state has spent hundreds of thousands of dollars in legal fees to establish the state's jurisdiction. We got off cheap. In Wyoming, I understand the state spent at least 12 million dollars to establish the same point. In no state that I know of has the United States ever willingly participated in a state adjudication. In no state that I know of has the United States ever prevailed in its argument that it need not participate. Nevertheless, the United States' continuing effort to assert extremely technical arguments to prevent the states from adjudicating has wasted millions of dollars and decades of effort that could have actually adjudicated the rights by now.

With respect to water rights held by, or developed with the help of, the Bureau of Reclamation, the state has historically worked with the Bureau and its patron districts and individual users to insure compliance with state water law, as required by the Reclamation Act of 1902. Often, state granted water rights have included conditions that require compliance with contracts between the Bureau and districts, as a condition of exercise of their state water right. In other cases, however, the Bureau seems to have authorized or encouraged water use within the districts in contravention to state water right restrictions. Much remains to be done to continue our recent efforts to coordinate the partnership between the state and Bureau to ensure compliance with both state and federal law.

We appreciate that the United States must balance many interests as it develops, asserts and defends water rights. The United States owes a trust responsibility to the Tribes to defend tribal reserved rights for fishery protection, irrigation and other treaty purposes. It must comply with NEPA, ESA and Clean Water Act concerns. It must carry out its

mission, established in the Reclamation Act, to reclaim the arid west through irrigation projects. The state has been balancing these same goals for decades, and have successfully adjudicated nearly three-quarters of the state. Unfortunately, only two of those adjudications have quantified federal and tribal reserved rights: Here in the Umatilla Basin and in the Lost River Basin, because until Congress' enactment of the McCarran Amendment (43 USC § 666) which waived federal and tribal sovereignty, the state could adjudicate only if the United States requested an adjudication. We have repeatedly indicated our willingness to help the United States comply with the state system. If the United States is not going to help us in this effort by participating in this already established system, at least they should get out of the way.

We would also ask that the United States carry its share of the load with respect to the expenses the states incur to conduct these complicated and time consuming proceedings. Until a recent United States Supreme Court case that arose in Idaho, the United States had been required to pay filing fees like all other claimants. Those fees are based on how much water a person claims, so that these expenses are fairly apportioned among the claimants. Many states like Oregon face budget shortfalls, and consequently are looking to those who primarily benefit from a service the government provides to help pay for the service. In most cases, the United States will be the principal beneficiary of adjudications which are likely to establish large, old federal claims to water. As a matter of fairness, the United States should once again be required to pay these filing fees.

We are also concerned that once rights have been adjudicated, the Untied States will assert that it need not comply with the orders of state watermasters when they regulate between users of a source because of a potential technical argument that a watermaster order is not a traditional "law suit". To avert the possibility of such a time-consuming and short sighted argument, we would also ask that the McCarran Amendment be amended to reflect the history of court decisions interpreting the amendment instructing that it should be interpreted to accomplish its purpose rather than technically. We have prepared language that would accomplish these goals for your consideration.

tjh/SEA0176.MEM

WATER RIGHTS IN IDAHO

THURSDAY, OCTOBER 5, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON WATER AND POWER RESOURCES, COMMITTEE ON RESOURCES,
Boise, ID.

The subcommittee met, pursuant to call at 11:14 a.m., in the Boise City Hall, Boise, Idaho, Hon. John T. Doolittle (Chairman of the Subcommittee) presiding.

STATEMENT OF THE HONORABLE JOHN T. DOOLITTLE, A U.S. REPRESENTATIVE FROM CALIFORNIA; AND CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER RESOURCES

Mr. DOOLITTLE. The Subcommittee will come to order.

The Subcommittee is meeting today to hear testimony concerning Federal actions that are affecting local water rights.

The Chair would like to acknowledge the presence of members of the panel. A special guest with us today is Idaho's Senator, Senator Craig. We are pleased to have him with us. We welcome you to the panel. I know you have pressing business that takes you away in awhile, so we are pleased you can stay for whatever portion of it is possible.

This hearing was convened at the very insistent and persuasive urging of your Representative Helen Chenoweth, and I finally gave in, so that we could get peace, and we are here and glad to be here. It is a beautiful place to be.

I would like to welcome Doc Hastings from eastern Washington, who is a member of this panel; Wes Cooley, from Oregon, in whose district we held a hearing yesterday; and of course Mrs. Chenoweth; and then Richard Pombo, he and I are from more or less similar parts of California, I am from the Sacramento area and he is from the Stockton area; and driving someplace between Oregon and here is Frank Cremeans, who should be here sometime this morning. He represents a district in southeastern Ohio, and Alamo wouldn't take the car last night where he wanted to leave it, so he had to drive. I guess it is about a five hour drive, but we expect to see him sometime.

I think the witnesses know this, but I just want to make everybody aware, it is our intention to put the witnesses under oath this morning and that will be administered panel-by-panel.

There have been many requests by people to testify, more than we can accommodate. Some of our members are under some strict deadlines for meeting airplanes after this. As a result, it is not our ability to hear everybody's oral testimony this morning. The record will be held open and anyone wishing to submit written testimony,

which will be incorporated into the formal record, is invited to do so and it will appear with the other material.

I want to welcome our witnesses here today and I look forward to hearing their statements. I also want to thank Congressman Chenoweth for her leadership in requesting this hearing in order for the Subcommittee to examine water supply pressures facing the residents of Idaho.

I know that these pressures are great. The listing of several salmon species on the Columbia/Snake River system as endangered, the ongoing Snake River Basin Adjudication, demands for more water for flow augmentation and other uses are all placing pressure on Bureau of Reclamation contractors. However, the result of these pressures cannot be the Federalization of water from Reclamation projects. State governments have supremacy in the allocation of water for beneficial use, and this Congress is determined to ensure that state supremacy is upheld.

We all recognize that water is a precious commodity in the arid west. In this region, the Columbia/Snake River system is truly the lifeblood of the northwest. This system provides irrigation and drinking water, navigation and hydroelectric power as well as habitat for numerous fish species.

Entire economies have been built around the development of the Columbia and Snake Rivers. We will hear today from witnesses who rely on the river and its tributaries for water supplies, hydroelectric power and transportation. We will also hear from the tribes which rely on a healthy river system for fisheries. Again, we all look forward to hearing your assessment of the challenges facing water managers and your views on how to resolve some of these issues.

With respect to the current Snake River Basin Adjudication, I am concerned that various Federal agencies have filed over 7000 claims in the Basin, and that the Bureau of Reclamation has also filed with the Idaho Department of Water Resources for change in the nature of use for the more than five million acre feet of water stored behind Reclamation dams. Again, these actions must not lead to the Federalization of Idaho's water. These proceedings will continue to be monitored closely by the Subcommittee.

The Chair will recognize Ms. Chenoweth for her opening statement.

STATEMENT OF THE HONORABLE HELEN CHENOWETH, A U.S. REPRESENTATIVE FROM IDAHO

Ms. CHENOWETH. Thank you, Mr. Chairman. And I am very pleased and deeply grateful that Senator Larry Craig could join us in a surprise visit this morning in this very important hearing. Senator Craig's leadership in the issue of water and water rights had been very learned and remarkable. It is a pleasure to work with the Senator back in Washington, D.C. and to work with the kind of leadership that he exudes. I am also very pleased that the Governor could join us. I am very proud of the work that is being done on behalf of the state of Idaho and I thank the Governor for taking time out of his busy schedule also to join us.

I am so pleased to welcome Congressman Doolittle and my colleagues on the Water and Power Subcommittee. I think this is a

first for Idaho, when a full Committee has come to hold a hearing in the state. And I would like to thank the many witnesses who will be joining us today. Some of you have traveled a long way to express your concerns and your hope for the future over a very vital economic issue; that is, the issue of Idaho water.

You know, Oliver Wendell Holmes said that "the life of the law is not logic, but experience." And nothing could better describe the development of laws regarding water in the west than that statement.

Throughout this century, for the purpose of instilling order, states have carefully constructed laws to regulate and preserve water to fulfill all of its multiple uses. As a result of these laws, once desert lands have begun to bloom and wildlife has thrived in our reservoirs and rivers, and generations of people have had the opportunity to enjoy the diverse and rugged beauty of the west.

The rugged pioneers of the mid 1800's created a need for a solid blueprint to be established so that water would be fairly allocated for all of its numerous purposes. And water was gold to those early settlers and to this day remains a resource that is revered above all others.

The need for a system of allocation led to the prior appropriation doctrine—first in time, first in right—which firmly established the method of allocation of water in the west. And because water became the vital factor in determining the value of farmland, it was actually determined to be appurtenant, or connected in a proprietary way, to the land it was used on.

Under the equal footing doctrine, Congress inherently gave the states the responsibility to determine the appropriation of their waters. The Idaho Constitution specifically declares that the state alone controls the allocation of appropriated water, and unappropriated water. Furthermore, it states that whatever waters are not appropriated, it owns—and can only be used for a beneficial purpose, specifically expressed by state law.

The Reclamation Act of 1902 gave the early westerners a means to harness the productive benefits of the water, to use it to develop thriving communities on lands that were previously inhospitable. More than that, the legislation was seen by its drafters as a tremendous achievement that would have benefits for all Americans. The report from the Committee on Irrigation of Lands which accompanied the Act contains a message from President Roosevelt that states:

"The reclamation and settlement of the arid lands will enrich every portion of our country, just as the settlement of the Ohio and Mississippi valleys brought prosperity to the Atlantic States. ...Our people as a whole will profit, for successful home making is but another name for the upbuilding of a nation."

The Reclamation Act also specifically recognized state sovereignty over water.

In the critical decision, *California v. the United States,* in which the Supreme Court reaffirmed the validity of the Reclamation Act of 1902, the Court also speculated on what would be the result if state laws controlling water were to be preempted by the Federal regulatory decisions. The Supreme Court said:

"To take from the legislatures of the various states and territories, the control of water at the present time would be something less than suicidal...If the appropriation and use were not under the provisions of the state law, the utmost confusion would prevail."

Mr. Chairman, Senator Craig, Governor Batt, that is the reason that we appear here in Idaho, is to make sure that what the United States Supreme Court predicted will not come true, that the utmost confusion will never prevail in the use of Idaho law, water law.

Mr. Chairman, I will submit for the record the rest of my opening statement.

Thank you.

[The statement of Ms. Chenoweth may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Without objection, Senator Craig will be recognized to make an opening statement.

STATEMENT OF THE HONORABLE LARRY E. CRAIG, A U.S. SENATOR FROM IDAHO

Senator CRAIG. Well, Mr. Chairman, I will be very brief, but thank you so much for the courtesy you have offered me in being allowed to sit in for a few moments with this important committee. And let me also say, Mr. Chairman, thank you for listening to our Congressman Helen Chenoweth in bringing your committee here to Idaho to hear from Idahoans about our concern for water and its allocated uses.

I have the privilege of chairing the counterpart committee on the Senate side in the Energy and Natural Resources Committee, which is Forestry and Public Lands, which has water and reclamation as one of its areas of concern. So I will watch with great interest the testimony and the hearing record you accumulate.

Let me suggest only one thing that I think speaks clearly to what Helen has just said about our history and what you have just said about primacy as it relates to the role western states have played in the allocation of their water resources.

Mr. Chairman, and to the members who serve on this Committee, you are sitting in the middle of high country desert. It is hard for you to believe that that is true, but you are. This is a desert, it is a high country desert and before man came here, at least modern man, that is what it was—plains filled with sagebrush, limited grass, limited resources, and in all fairness, in some instances limited wildlife. Our ability to manage water has produced the abundance you see and the wealth you see that exists here today. And that ability to manage water was that the states had the right to make the decisions, as they did in your area of California, Mr. Chairman, as to how water would be allocated and how it would be used.

Today, more than ever before, water has become an increasingly valuable natural resource commodity for a diverse group of interest. The Indian community and our Native Americans that are here today express a legitimate concern about its use. You will hear from utilities about their concern. The Bureau of Reclamation is in the audience today, they have a legitimate legal responsibility for management, but the bottom line is the pressures are even

greater today than ever before as to how our water is used or how it may be used in new ways that our forefathers did not really think were necessary for its uses.

The only thing I can say is that if the Congress consistently believes, as they have in the past, that the legitimate role for managing water is within the states, then those changes as they occur and as they need to occur will come harmoniously with the population of those states, and the needs of those states and the needs of the natural resources of those states. If the single unwise and sometimes unseeing authority of the Federal Government is allowed to make those decisions, we will stumble and fail because those will be the wrong decisions.

We have made and our founding fathers and forefathers made the right decisions in the past. We will be asked to make new decisions in the future and some of those may be unforeseen and water uses may be reallocated. But as long as it is made with inside the state at the state level with our Governor and the legislature and the resource authorities here, I think those decisions will be the right ones.

I thank you, Mr. Chairman, for coming and bringing your Committee today.

Mr. DOOLITTLE. Thank you, Senator.

Does any other member of the Subcommittee wish to make an opening statement?

[No response.]

Mr. DOOLITTLE. Then we will ask our first witness, the Governor, to approach. And if he will raise his right hand, I will administer the oath.

[Witness sworn.]

Mr. DOOLITTLE. Thank you. Governor Batt, we are honored by your presence and the floor is yours.

STATEMENT OF THE HONORABLE PHILIP E. BATT, GOVERNOR, STATE OF IDAHO

Governor BATT. We have got enough chairs here to handle me, I think.

[Laughter.]

Governor BATT. Mr. Chairman, Congressman Chenoweth, Larry and members of the Committee, I would like to open by welcoming you all to Idaho. I am absolutely delighted that you would come out here and bring your hearing abilities to hear what the people of Idaho have to say about these critical matters. And I appreciate the opportunity to testify before this Committee and to express the concerns of the citizens of Idaho. And Helen, I would like to congratulate you on your persuasive powers to get them to come out here. That is great.

As the members of this Committee are well aware, there is nothing more precious to the people of the state of Idaho than our limited water resources. We need it to irrigate the crops that form the backbone of our economy, we need it for historic rights and uses in Idaho, we also need it to maintain and preserve the fishery resources that support our tourist industry, form part of our heritage, and we need it for a multitude of other purposes connected with our growing population.

As Governor, it is my job to make sure that all of these interests are protected. In my view, the best way to take care of Idahoans is to let Idaho have a definitive voice in how natural resource management decisions are made. This hearing is an example of the importance of that concept. It is apparent that the National Marine Fisheries Service decision to use storage water in Idaho reservoirs to recover endangered salmon species has the potential to both violate Idaho state law and destroy Idaho's agricultural communities. From Idaho's perspective, there is substantial uncertainty regarding whether these flow measures will do any good. National Marine Fisheries says they will, otners say they will not.

As I said before, it is my job to look out for the water users and the fish. That is why the state does not oppose experimental use of upper Snake River water for salmon recovery, provided the decision to release that water is made on a temporary basis with strict adherence to applicable state law. Unlike NMFS' program, Idaho's balanced approach would make allowances for hydrological reality and the brutal impact of drought.

You have asked me to talk about the relationship between state water rights and flow augmentation. Karl Dreher, Director of the Idaho Department of Water Resources, will be able to summarize those points that I have over looked.

However, I would like to leave you with an observation about flexibility. The state of Idaho has developed positions on the use of Idaho water that are flexible and politically viable. Standing in the way, as always, is the Endangered Species Act. My state can craft a plan that will save fish without destroying the economy. I suspect other states can do the same. There are several steps that I believe the Federal Government should take in order to protect Idaho's interests.

First, legislation should be enacted requiring Federal agencies to pay a fair share of the cost of adjudications.

Second, Congress needs to clarify through legislation that flow augmentation releases will be made only in accordance with state law.

Third, Congress should instruct the relevant executive agencies to fully compensate holders of private water rights for damage if the use of their water is limited to protect a listed species.

And finally, any new legislation enacted should provide for state control of water and other natural resources within the boundary of the state.

I would urge you to do whatever it takes to restore to the states their legitimate role in the management of their own natural resources.

Mr. Chairman, members of the Committee, I have provided you with a more detailed set of comments that I ask you to please submit to the written record. Unfortunately, my schedule does not permit me to stay. I once again want to thank you for the opportunity to testify and I hope you enjoy your visit to our beautiful state. And as you mentioned before, Mr. Chairman, I would have time for a couple of questions, if you have them.

[The statement of Governor Batt may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Does any member have questions of the Governor?

[No response.]

Mr. DOOLITTLE. We know you are going to have your state experts following you in the next panel. We very much appreciate you taking the time to come here, and thank you very much.

Governor BATT. Thank you, sir. Thank you, Committee.

Mr. DOOLITTLE. I would like to invite panel one. Let me just explain how this is going to work. Each of these panels has several members on it. Each of the members of the panel will testify and then following the last person's testimony on the panel, we will begin the round of questions and each member up here will have five minutes to address questions to any one of the witnesses.

If the members of panel one would come forward and remain standing, we will administer the oath to you. Karl Dreher, John Keys accompanied by Roy Heberger, the Honorable Charles Cuddy, Julia Davis and Fred Grant. If you would please assemble yourselves up here. Let me see now, who are we missing? Mr. Heberger, you are available to answer questions. Since you would then be testifying, would you also take this oath with the others?

Mr. KEYS. Mr. Doolittle, Mr. Heberger could not be with us but Susan Martin from the Fish and Wildlife Service is.

Mr. DOOLITTLE. Oh, all right, Ms. Martin, if you would please come forward then.

If you would please raise your right hand.

[Witnesses sworn.]

Mr. DOOLITTLE. Let the record reflect that each of the witnesses answered in the affirmative. Please have a seat. We are going to begin with Mr. Dreher.

These lights down here are our method of guiding the witnesses and the members in their time use. You each have five minutes. For the first four, the green light will remain lighted, and at the beginning of the fifth minute, the yellow light will light and at the end of the fifth minute, the red light will go on. We would appreciate you trying to adhere to those as much as possible.

The first witness will be Mr. Dreher, who is the Director of the Idaho Department of Water Resources. Mr. Dreher.

STATEMENT OF KARL DREHER, DIRECTOR, IDAHO DEPARTMENT OF WATER RESOURCES

Mr. DREHER. Thank you, Mr. Chairman and members of the Subcommittee. I will follow the four points that the Governor raised and try to provide a little additional background in what the state's perspective is on these matters.

First off, regarding the adjudication, the Federal Government, through the Bureau of Reclamation, initially was willing to pay its fees, its fair share of the fees for the adjudication, but subsequently the Justice Department decided that the Federal Government should not pay and that was affirmed in the Supreme Court decision.

The problem with the Federal Government participating in the adjudication but not paying its fees is that the burden then falls unfairly on Idaho water users, who only partially benefit from the adjudication. Whatever Federal claims, whether it be agency claims

or tribal claims, are eventually decreed. Those decrees will benefit those Federal interests and the Idaho water users then are left with not only having paid their filing fees, but paying their attorneys to defend their claims, paying state taxes to continue the adjudication to make up for the deficit that was caused by the Federal Government not participating, paying Federal taxes to support the Federal agencies in defending their claims and then also paying Federal taxes to support the Federal Government attacks against the private individuals claims in an effort to defend the claims that the Federal Government has made.

To us, this is not a matter of a problem that affects just Idaho, it is a matter of equity that affects a number of western states that are going through adjudications and we would ask that this Subcommittee work with the states to develop legislation that would remedy the problem. I might add that there has been a proposal advanced I believe from the state of Oregon to amend the McCarren Act. Idaho would suggest that the McCarren Act not be amended and that separate legislation be enacted to deal with the payment of fees problem.

Secondly, the Governor mentioned that flow augmentation be made only in accordance with state law. So far, we have enjoyed in Idaho a productive, cooperative working relationship with the Regional Director for the Bureau of Reclamation, Mr. John Keys. Our concern is that if that productive, cooperative effort does not bring about the desired result that the National Marine Fisheries Service believes has to be attained, and that is the release of 427,000 acre feet of water every year, regardless of the hydrologic conditions, out of the upper Snake Basin, that Mr. Keys will be instructed to in essence take the water to meet the flow targets. That would violate state law and would be an infringement on the property rights that are granted to the individuals that hold the rights to use the water from that contractual space. And so we would ask that this Subcommittee and Congress consider legislation that would ensure that any future flow augmentation, whether experimental or permanent, would be made strictly in accordance with state law.

The third issue that the Governor raised dealt with compensating holders of private water rights for any damage if their water is taken or used or they are denied the right to use that water in order to protect an endangered species.

In Idaho, we have a controversy currently underway involving the Bruneau-Hot Springs snail. Originally the species was to be listed and then listing was thwarted through procedural errors and recently now there has been a court decision that will allow the listing process to again resume.

When the Fish and Wildlife Service originally considered listing the Hot Springs-Bruneau snail, they indicated that in order to protect the habitat for this snail, that they would seek curtailment of water rights appropriators who had priority dates junior to 1970. Whereas there would be a great number of water rights holders that would not be affected by curtailment of a 1970 right, there still are a number of agricultural users that would be impacted by any such curtailment. And as far as we are aware, the Fish and Wildlife Service did not propose any sort of compensation for, in es-

sence, what would constitute a taking through such a curtailment. And we would ask that the Subcommittee and Congress as well make sure that if private water rights are needed, legitimately needed, to recover a species that can be recovered and should be recovered, that they be compensated if their water rights are, in essence, taken or curtailed.

Finally, there has recently been legislation proposed out of the House Resource Committee dealing primarily with the sale of power marketing agencies. And the legislation addresses the sale of the Southeastern Power Marketing Agency as well as the Southwestern and Western Area Power Administration agencies. Whereas, sale of those particular agencies does not affect Idaho directly, there is language in the House Resources report that is of concern, and that language—let me just read you one paragraph of this. The language says that "Once a transferred project"—this would be a project that is sold from Federal ownership into private ownership—"receives its license, the project owner is not required to obtain permits, authorizations or approvals from any other agency with respect to project operations. This provisions reaffirms the principle that the Commission has the sole and exclusive licensing authority for non-Federal hydropower."

Whereas we agree that the Commission does have the exclusive authority for licensing non-Federal hydropower, we do not believe that that authority should be used to preempt state water rights. And as written, this language would appear to propose that not only are FERC licensed projects exempt from other Federal permits, but they are also exempt from state permits and state authorizations or approvals. Additionally, by reaffirming that FERC has the sole and exclusive licensing authority, the language could be construed to remove state authority over water rights granted for hydroelectric power production. We think this Subcommittee could help in making sure that that language is appropriately revised to clarify that the intent here is not to preempt state supremacy over its water.

Thank you very much.

Mr. DOOLITTLE. Thank you. Mr. Keys, Regional Director of the Bureau of Reclamation, who was with us yesterday in Oregon. We are pleased to have you here again, and you are recognized for your testimony.

STATEMENT OF JOHN KEYS, REGIONAL DIRECTOR, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY SUSAN MARTIN, SNAKE RIVER BASIN OFFICE, U.S. FISH AND WILDLIFE SERVICE

Mr. KEYS. Mr. Chairman, thank you for having us here today.

I am John Keys, Regional Director for the Pacific Northwest Region of the Bureau of Reclamation. It is a pleasure to be here and talk with you about water in the state of Idaho. I have submitted a full statement and I would request that it be part of the hearing record, and to accommodate the time constraints, I would summarize.

The 1902 Reclamation Act contains Section 8, which says that when the Bureau of Reclamation builds a project, we will obtain from the state in which that project is built, a water right to build

the project under, and then we will operate within that water right after the project is constructed.

Our Secretary of the Interior, in several statements, has reaffirmed his commitment to the state water right process when he said that all of the water that we would obtain for salmon would be obtained within state water law and from willing sellers. I think that the action that he has taken to appoint a new Commissioner of the Bureau of Reclamation who is a former state engineer, who believes in state water rights firmly, is a recommitment to that concept. I am here to tell you that the Bureau of Reclamation in this region believes in state water rights and has every intent to follow them. There are subsequent laws that we have to deal with that all of us are committed to work under—the National Environmental Policy Act, the Endangered Species Act, Reclamation Reform Act and so forth.

Talking about the Endangered Species Act, 1991 listings for salmon in the basin caused a lot of changes on how we look at our water in Idaho. It has caused us to have a close working relationship between the Federal agencies that work in water in this basin, the tribes that depend on the water, the states that administer the water and the other organizations. And that relationship has become very close in the basin.

From 1991 to 1995, we delivered water from this basin to meet the Biological Opinion requirements. In four out of five years we met the full 427,000 acre feet requirement. In all cases that was done within state water rights and from willing sellers of the water. There was no water taken, never has been; we do not think there ever will be.

The biological opinions that we worked under, 1992, 1993 and the one for 1994 to 1998 and 1995 to 1998, have all been negotiated between National Marine Fisheries Service and the operating agencies. They call for shifts of flood control space from Grand Coulee and Hungry Horse Reservoirs to help make more water available in the spring when the salmon need water. It called on us to produce, out of the basin, about 427,000 acre feet of water a year for those salmon, and it called for us to do studies on how effective those releases are and what other effects on the system may be—in other words, what effects are harvests having, what effects are the estuaries having and so forth. We also work with other endangered species. There are four snails listed on the mainstem of the Snake River that we tailor our releases to accommodate, so that it does not further damage them.

In handling the 427,000 acre feet, as I said, it has all been within the state water law. We use that water in the following priority. The first thing we do is we use it from uncontracted space that the Bureau of Reclamation still has within its control. Then we go to the water banks to lease water from the various water banks in the basin—the Upper Snake Basin, the Payette and the Boise water banks are all part of the agreements that we work with. In doing that, we are still working within state water law.

In 1991, we went to the state Department of Water Resources and asked what do we need to do to accommodate state water law in moving this water. At that time, it was agreed to not require a change, see how it would work, see what changes were necessary.

In 1992, it was determined that we should change the nature of use of the water rights that we hold to our reservoirs. In the negotiations that followed, the state legislature passed a bill—Idaho Code 42–1763A—that allowed us to move that water through water banks but within the state law for three years. In 1994, that Act was extended for a year. In 1995, we have applied for the water right changes that are the subject of ongoing work with the Idaho Water Resources Department. That was done on May 15, we have since reached a stipulated agreement to cover operations in 1996 and negotiations are underway to cover actions in the future. We are still negotiating on how long that will cover, what it will include and so forth. And we expect to work with the legislature after the first of the year to complete the second part of working within Idaho water law. The first part is to do the water right change, the second is to go back to the legislature for its permission to move that water out of the basin.

In all of this work, there are some basic tenets. The first one is the two purposes for us moving this water. Number one is to help the fish; number two is to protect the ability of the Bureau of Reclamation to deliver water under its contracts to those irrigation contractors and others. The other tenet: all of our actions and efforts will be done within state water law, and the third one is that we will only obtain water from willing sellers. There has been and there will be no taking of water to meet the salmon actions under this administration.

Mr. Chairman, I would stand for questions when you are ready.

[The statement of Mr. Keys may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Our next witness is the Honorable Charles Cuddy. Mr. Cuddy is a Representative in the Idaho State Legislature.

STATEMENT OF THE HONORABLE CHARLES CUDDY, IDAHO STATE REPRESENTATIVE

Mr. CUDDY. Thank you, Mr. Chairman. It pleases me that you asked me to testify today, and I particularly want to thank Congresswoman Chenoweth for bringing you people all to Idaho to hear about our difficulties.

What you have recently heard, I would like to clarify just a bit. You have heard about the 427,000 acre feet that comes from the BOR dams. What you have not heard about is that Idaho is actually contributing 1,700,000 acre feet of water to the salmon recovery plan. The remainder of that, Mr. Chairman, comes from one dam in my district, as you will hear later as we go through my testimony.

Of course, as you know, with this in mind, water issues are very near and dear to me. The first thing I want to address is this dam, Dworshak dam, a federally-owned dam, operated for water storage facility situated on the north fork of the Clearwater River. And just briefly, I would remind you that my district is about 14,000 acres in area or 13,000 acres in area. It takes in the heart of the best timberland in Idaho and in the inland west. It also has ag land and arid land. In my district there is the Clearwater River, a good portion of the Snake River, a good portion of the Salmon River and the St. Joe River, a portion of that. Primarily, my district covers

almost the major part of water in Idaho, all of it pretty much free flowing.

This reservoir in Orofino called Dworshak is recognized for its high water quality and also its cool temperature. Although it drains an area and has and continues to produce the major part of the district's raw material for our wood products industry, which is our major industry, and is the heart of the most productive forest land in the inland United States, Dworshak was portrayed to the people and commissioned and economically justified to produce power, provide flood control and recreation. When Dworshak dam was proposed, the local community felt secure with the explanation that drawdowns would occur during winter to provide power and supplemental water for power generation for the downstream Snake and Columbia River hydro projects, which I believe there are seven that it sends water to.

By this method, storage was available for spring runoff, providing flood control, and the pool was adequately refilled to maximize recreational benefits from mid-spring to mid-autumn. All of the Commission criteria were being met. This method of operation also minimized loss to resident fisheries as the drawdown occurred in the winter when the fish were most dormant.

Prior to construction of Dworshak dam, Potlatch Corporation annually used this river to drive logs during spring runoff for a distance of up to 90 miles. And this would be logs that they had spent probably six months decking and then they would put them in the river when the water was high, float them to Lewiston. A very economical method of shipment. To mitigate this loss when the dam was constructed, the United States contractually agreed with Potlatch Corporation and other wood products companies to tug log rafts the length of the pool. Private and public facilities were constructed to accommodate this use at various locations along the pool. All of these functions worked harmoniously and satisfactorily until a strain of sockeye salmon native to the Salmon River was named to the endangered species, a species that in fact, prior to this time, was considered, for all practical purposes, extinct by many respected biologists.

In 1992, we began experiencing summer drawdowns at Dworshak to save this species of salmon. This drawdown directly and adversely affected two of the three commissioned uses of this public facility, those being power generation and recreation. The contracted use for log handling was curtailed due to the unusable facilities. These drawdowns have continued annually since this occurrence, with one exception. The drawdowns have increased from 50 feet the first year to over 100 feet in 1994 and 1995. Adverse effects are due to the fact that these drawdowns now occur between May and August with refill not occurring until May and early June the following year.

A recent study by the Corps of Engineers revealed that recreational economic loss for Orofino, Idaho, a community of approximately 3500 people, is around $7 million a year and could range as high as $15 million per year. Cumulative loss from Dworshak and downriver dams is estimated at approximately $400 million a year in power loss. The log transportation situation directly affects

school endowment and other public funds due to greatly increased log shipping cost from harvested timber.

The reality of the situation is that since two separate species of salmon were listed in the same drainage, regulatory attention to sustaining the sockeye run has greatly diminished, but increased demand for flow augmentation water from Dworshak has certainly increased.

Analysis of statistics in the 1992 Columbia River salmon flow measures draft EIS by the Corps of Engineers states that by 1938, the salmon populations returning to the Columbia River had been reduced by some 50 percent. 1938 was the year Bonneville dam was constructed across the Columbia River. And that was the first lower Columbia River dam. By any arithmetic scenario you desire to use, you will find that what is happening to our fish today, should reasonably have been expected.

Under current recovery operations, 65 percent of Dworshak's active storage capacity is being used for salmonoid recovery. This also amounts to 76 percent of the Snake River contribution to stored water for flow augmentation, fish flush, et cetera. Keep in mind the mean annual flow to Dworshak Reservoir is approximately 6800 cubic feet a second and the mean annual flow for the Snake River before the Clearwater enters is 34,000 cubic feet a second, and five miles downriver where it leaves Idaho at the confluence of the Clearwater, it is approximately 45,000 CFS.

When one considers that the Snake River drainage consists of most of Idaho, southeastern Washington, much of eastern Oregon, part of Nevada, part of Wyoming, obviously the burden of recovery is not being equitably shared when one county in Idaho makes 60 percent of the contribution.

A review of the returning listed salmonoid indicates a number in the neighborhood of 500. This represents a cost of approximately $800,000 each. Maybe we should consider how many children this would provide a college education, how many miles of deteriorated highway this would repair, or in the case of water quality, how many acres of wildfire scorched land this would revegetate, and how many effluent problems we could rectify.

I want to make it clear that we are not opposed to salmon recovery, but equity, feasibility, economics and local governments must be an integral part of water management in the west.

Thank you.

[The statement of Mr. Cuddy may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Julia Davis, Vice Chairman of the Nez Perce Tribe is recognized.

STATEMENT OF JULIA DAVIS, VICE CHAIRMAN, NEZ PERCE TRIBE

Ms. DAVIS. Tuts Mewe. That means good morning in my Nez Perce language.

As stated, my name is Julia Davis and I am Vice Chair of the Nez Perce Tribe. What I would like to do this morning before I start my statements is thank the Committee on Resources, Subcommittee on Water and Power for coming out to this beautiful state of Idaho. It is a pleasure to see the Representatives out in the field instead of calling for testimony back in Washington, D.C.

It is important to listen to the people that this is affecting. So I thank you for coming out.

The Nez Perce Tribe became involved in the Snake River Basin adjudication when the state, Idaho State Court, determined that the adjudication would include the entire Snake Basin, expanding the case area to include the Salmon and Clearwater drainages. The Nez Perce Tribe, and the United States on its behalf, have filed reserve water right claims to protect and maintain the fishing rights the Nez Perce Tribe reserved in its treaties with the United States in 1855 and 1863, as well as for consumptive uses on the Nez Perce Reservation. I would like to add at this time that the Nez Perce people firmly believe that we are also Idahoans as well as sovereign members of the Nez Perce Nation. The fish resources of the Nez Perce aboriginal territory, together with the native plants and wildlife, sustained the Nez Perce people for many generations. The right to continue this reliance was critical to the tribal negotiators during the time the treaty was made, and without the agreement of the United States to preserve the right to fish, no treaty would have ever been made possible.

The claims are now before the Snake River Basin adjudication court and have been since March of 1993. The claims are controversial, as is made clear by the thousands of objections we have received in the court proceeding. However, we believe the claims are valid and a necessary exercise of the Federal Government's trust responsibility to protect the treaty-reserved rights of the Nez Perce Tribe. Perhaps more practically, we believe water management in Idaho must change to better protect fishery resources. We are hopeful, however, that this change can come as a result of negotiations among the sovereigns and the private water users, and not as a result of protracted, incredibly expensive, litigation of the tribal claims.

The stated policy of the governments of the Nez Perce Tribe in the United States and the state of Idaho is to seek negotiated resolution to these claims, if possible. To that end, we have been negotiating successfully with the governments of the state of Idaho and the United States as well as the private water users for over two years. Substantial progress has been made on the Tribe's consumptive claims and we are beginning the difficult process of negotiating the Tribe's instream flow claims. In the region of the reservation, we are lucky to have the abundant supply of the Clearwater River, so there are few major conflicts between our consumptive claims and existing water users.

We began these negotiations with great hope that the negotiations can result in a settlement that this Committee and others in Congress can wholeheartedly support, and we continue to be optimistic that such an agreement is possible. We have kept the Idaho Congressional delegation apprised of the progress of the negotiations, and we will continue to do so. Your support is vital to the successful conclusion and implementation of a settlement.

The Nez Perce Tribe, with a reservation located near Lewiston, Idaho, is in a critical location with respect to two other major water issues facing the region and the country. The Tribe benefits from the use of barge transportation for its commodities, transportation only available because of the Federal dams on the lower Snake.

However, the Tribe has two other concerns with the lower Snake projects. One, many tribal burials are located along the shores of the reservoirs, and are subject to erosion and looting in proposed drawdowns of the river without proper management. And two, the lower Snake projects clearly have a strong adverse impact on Snake River salmon and steelhead—fish the Tribe is committed to restoring. The Tribe, like other governments, must weigh these competing interests and determine how to best meet them.

In addition, Dworshak Dam sits within the reservation boundaries. Highly productive spawning grounds were inundated and Clearwater River fisheries relied on by the Tribe for millennia, have never recovered from its construction. Like others affected by the operation of the project, we believe operations should change.

The positions taken by the Tribe on these two issues, and others affecting the restoration of Snake River salmon, are included in the draft tribal recovery plan prepared by the four Columbia River treaty tribes and the Columbia River Inter-Tribal Fish Commission. The tribes propose a variety of short- and long-term alternatives which we believe should be evaluated and if effective, should be implemented as soon as possible. There are four proposed alternatives involving year-round drawdowns of one or more of the Snake River projects. The Tribe suggests the transportation and commercial issues be fully analyzed, and that the cost of providing alternative transportation to shippers using Lewiston Port be determined as part of the analysis in deciding whether to draw the river down.

The long term proposal for Dworshak reservoir calls for it to be maintained at or near full pool, with the natural hydrograph restored, so spring runoff is available for outmigrating salmon, and the resident fisheries in the reservoir are protected. This would require changes in flood control on the system, to allow the project to pass through nearly all the water that comes into it.

We believe with the plan's outlined changes elsewhere in the system, Dworshak can be operated to minimize damage to the anadromous runs, and protect the resident fisheries and recreation interests at Dworshak as well.

Mr. Chairman, I would like to close my comments with a thought in mind to you as lawmakers to us and being here in the state of Idaho and to Congresswoman Chenoweth, to please take these comments that we have made here today to heart. We are very concerned and we do appreciate you coming here today.

Thank you for the opportunity to speak to you today.

Mr. DOOLITTLE. Thank you very much. Mr. Fred Grant is recognized.

STATEMENT OF FRED GRANT, OWYHEE COUNTY LAND USE PLANNING COMMITTEE

Mr. GRANT. Thank you, Mr. Chairman, Congresswoman Chenoweth and members of the Committee. I am here to represent the Owyhee County Land Use Planning Committee, to give the Committee some of the concerns that a county in the state of Idaho, involved with the water rights and interests of its citizens has with regard to some of the activities which the Federal agents and agencies in Idaho have taken. And on behalf of Owyhee Coun-

21-090 O - 96 - 7

ty, we welcome all the members of the Subcommittee to Idaho and wish to tell you how proud we are in our county of our Congresswoman from the First District.

This morning—and I have submitted a written statement regarding the concerns of our County Planning Committee, with regard to agency actions and private water rights. But this morning at about 10:15, I was asked to change my remarks somewhat to address a subject which Mark Pullatte would have addressed with you this morning. Mark is the head of the Constitutional Law Center of the Stewards of the Range, and he wished to address with you an issue of supremacy of Federal law, which he is sure you are going to be faced with at some point in the next few months. Mr. Pullatte is held up in the District of Columbia, so he is not able to speak to you today on this issue.

Susan Buxton was to replace him and she was held up, and so I am here with a few minutes notice to address you on a matter regarding the supremacy clause, and an issue which you will be made aware of because it is surfacing, and that is that Federal water use, under and consistent with purposes or uses under the Endangered Species Act, will be supreme to state water law, under the supremacy clause to the United States Constitution. And I am here today to tell you that that is not a view that is held by all constitutional lawyers and experts in constitutional law. And I want to express very briefly in this five minute period and hopefully then address it somewhat later in written comments that we would like to submit to the Committee, with the Committee's permission.

The supremacy clause in the Constitution of the United States requires that any Federal law is supreme when there is a conflict between the Federal law and state law. Members of the Committee, we do not believe there is a conflict in existence regarding the use of water and the Endangered Species Act, which would allow the supremacy clause to say that the Federal Government can supersede state water laws and state water procedures.

The Endangered Species Act, first of all, did not remove property from the public domain and it did not specifically reserve the use of water. And those are the two prime conditions that the United States Supreme Court has stated are required for the creation of reserved water rights which gives the Federal Government any type of primacy over state laws and state procedures. Section 5 of the Endangered Species Act, for example, requires that the Secretary, if he needs to acquire land or water, he needs to acquire—and the word is "acquire" in the words of the Congress—land or water by purchase, donation or other means. Now very specifically, that language indicates the intention of the Congress was not to reserve water rights to the Federal Government under the reserved right clause or doctrine which has been established by the United States Supreme Court. In *United States v. Arizona*, Mr. Justice Rehnquist for the Supreme Court of the United States said that in order for the Federal Government to have any type of primacy over state laws and procedures with regard to water, there had to be a specific reservation—first of all, there had to be a removal of public lands from the public domain. That is the first step, the threshold step, to the creation of a reserved Federal water right. Secondly,

the Congress had to show its intent, either explicitly or implicitly, that it reserved for that removal from the public domain, the use of water.

And then there are other conditions upon it. One is that no more water than necessary can be taken for the primary purpose of the reservation. When you apply *United States v. Arizona* and the specific provision of Section 5 of the Endangered Species Act, it is our position that in no way does the supremacy clause of the United States require or even permit the Federal Government to take primacy over state water law and procedure. I want to point out to the members of the Committee that no one who has testified this morning has advocated primacy over state law, but the issue has been expounded and the issue will be presented to you. As indicated earlier, if the Bureau of Reclamation and if the Secretary of Interior cannot accomplish through its current policies, our fear is that the Bureau will be later directed to take the water it needs. At that point, the supremacy clause will become very important.

Mr. Chairman, thank you very much.

[The statement of Mr. Grant may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir.

The Chair would like to recognize the arrival of the gentleman from southeastern Ohio, a long drive over here, we are glad you made it, Mr. Cremeans.

Mr. CREMEANS. Thank you.

Mr. DOOLITTLE. It is the intention of the Chair to recognize members in the following order—Ms. Chenoweth, Mr. Pombo, Mr. Cremeans, Mr. Cooley, Mr. Hastings. Ms. Chenoweth.

Ms. CHENOWETH. Thank you, Mr. Chairman, and ladies and gentlemen, I appreciate your testimony very much, and for coming in to testify here with the busy schedules I know that you all have.

I do want to state, Mr. Chairman, for the record, that my colleague, Mike Crapo, has submitted testimony for the record. He could not be with us today, but he will be submitting testimony for the record.

Mr. Dreher, you and I have had discussions about the stipulation agreement that the state is entering into with the Bureau of Reclamation. The copy of the stipulation that I have does not have the signatures on it. The signatories to the stipulation are the state, being represented by you, and the Bureau of Reclamation, being represented by Mr. Keys, right?

Mr. DREHER. That would be correct, yes.

Ms. CHENOWETH. Are there any other signatories to the stipulation?

Mr. DREHER. There were 80 some objectors, nearly 90 objectors, to the proposed application for change in nature of use. All 90 of those objectors now are signatories to that stipulation. And I have recently entered an order implementing the stipulation, staying the hearings on the proposed change in nature of use until no sooner of October of next year.

Ms. CHENOWETH. Now the hearings on the proposed change in nature of use would be on the 5.2 million acre feet?

Mr. DREHER. That is what the Bureau has applied for.

Ms. CHENOWETH. OK. In your opinion, is the 427,000 acre feet going to be used, if it is available, if it is not used as provided under Section 42–1763 and 4?

Mr. DREHER. To date, our understanding has been that the 427,000 acre feet would only come from willing seller, willing buyer relationships that the Bureau would enter into, and that no water beyond that amount would be used. However, not so much from the state's perspective, but I know that from the overall water user community's perspective, there is concern as to how viable that cap will be and whether in fact the Bureau will be able to maintain that cap or whether it will be instructed to exceed the cap and use more water than the 427,000 acre feet.

Ms. CHENOWETH. Do you foresee that if there is a demand for the 427,000 acre feet—and there will be every year—that you will be able to fulfill your obligations of delivering the full amount to all the existing water rights holders?

Mr. DREHER. Idaho has just come through an eight year period of drought and during portions of that drought the demands for water exceeded the water that was available. And one of the concerns that we have from the state's perspective is that it seems as though the National Marine Fisheries is asking for some sort of a guarantee from the Bureau that this 427,000 acre feet be available every year. That simply is not possible because we do live in a high desert, as Senator Craig pointed out, and we do go through drought periods, and there are times when the water is not available. And one of the concerns that we have got is that under the approach that we seem to be pursuing, this 427,000 acre feet would be released year-after-year, good years and bad supposedly, and what will happen may be much different than what people ever thought because the fact is we cannot guarantee the 427,000 acre feet. And what could happen is that by releasing water in good years when that water could have been held in carryover storage, that then when the drought comes, that water will not be in carryover storage, it will have already been released, and we may reach a point where the water is sorely needed for irrigation, sorely needed perhaps for salmon if that is a viable recovery option, and needed for municipal uses and it will not be there because we will have already sent it down the river.

Ms. CHENOWETH. Thank you, Mr. Dreher, and I want to say officially how much I welcome you to the state of Idaho, and I think that our water users will be well-served by your good work and will be well-protected by your good work.

Mr. DREHER. Thank you.

Ms. CHENOWETH. I want to turn to Mr. Keys and ask you—yesterday when you testified before our Committee, I asked you specifically do you intend that the 427,000 acre feet will be used on a yearly basis, and your answer to me was "yes." Is that what you maintain?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, the answer is still yes.

Ms. CHENOWETH. Then Mr. Keys, why has not your agency made a proper application, as any other water user would, rather than going through the stipulation process, an application to file for the use of 427,000 acre feet, as any irrigator would have to or anyone else.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, we have done that. The water right change that we have applied for is a change of nature of use of all of the storage space there, to allow the storage space that we hold, that Reclamation holds, to be used for the salmon, and allow us to purchase water from willing renters to meet that obligation.

Ms. CHENOWETH. Before you go on, Mr. Keys, I do want to ask you, willing renters would anticipate the water being brought back.

Mr. Chairman, I ask for unanimous consent for one more minute.

Mr. DOOLITTLE. Without objection.

Ms. CHENOWETH. That in times of shortage that water would be taken back by those who would need it, and in your answer to me yesterday, you anticipate on using that volume of water every year. And I think we both know that to file for a storage right is different than making an application for a use right or changing the nature of use of storage rights, which I question anyway. But you know that is a different filing. So I am asking you for an answer, why have you not made an application for a use right?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, those waters that we hold title to, Reclamation storage, we have asked that we be treated like any other water user and that change of nature of use right will let us take water that Reclamation owns and use it for salmon. The rental of water from rental pools is on an annual basis, and if someone does not want to rent water on an annual basis, they do not put it in the rental pool to go down the river.

Ms. CHENOWETH. Well, Mr. Keys, you may hold water rights in equity, but you only have storage rights given to you under Section 8 of the Reclamation Act. So I would ask that we really keep those definitions very clear.

Thank you very much.

Mr. DOOLITTLE. Thank you. Mr. Pombo is recognized.

Mr. POMBO. Thank you, Mr. Chairman.

Ms. Davis, in your prepared statement, one of your statements said something about that the tribe uses the river system to barge commodities downstream. Can you tell me what you barge downstream?

Ms. DAVIS. Yes, Mr. Chairman. We participate on the reservation on granaries that our tribal members lease and that the tribe leases to farmers. So——

Mr. POMBO. Agricultural commodities?

Ms. DAVIS. Agricultural. So what they have to do is barge the grains down to Portland.

Mr. POMBO. So within your own tribe, you have conflicting interests in terms of the use of the dams, the water, the level in the reservoirs. So it is not an easy answer for you either.

Ms. DAVIS. No, it is not. We met with the entire Idaho delegation back in February of this year and talked to them about this.

Mr. POMBO. You also mentioned in your statement that you have been negotiating with different interested parties, different stakeholders in this, for the last couple of years at least.

Ms. DAVIS. Uh-huh.

Mr. POMBO. In your opinion, is a settlement to the conflicting interests that arise better suited to local solutions, having the local stakeholders get together and try to decide what is the best thing

for the fisheries, for wildlife, for the irrigators, for the dams, the power users, everybody involved? Are we better off letting the local people make this decision?

Ms. DAVIS. Yes, I do believe the regional people that that affects, like with us that are up in north central Idaho, we do need to meet together and discuss it amongst ourselves.

Mr. POMBO. So you are not here asking the Federal Government to step into the middle of this and make it any worse than it already is.

Ms. DAVIS. Right.

Mr. POMBO. Thank you.

Mr. Dreher, in the Governor's statement, he said something to the effect of—and I am paraphrasing this—something to the effect of a state plan that would protect fish and wildlife and protect the private property rights of owners and he said that this was a state driven initiative. Could you explain a little bit more to me about that?

Mr. DREHER. There are maybe two elements of that that the Governor was referring to. First is the element that we have already referred to and that being the stipulation that the water users themselves came to regarding at least a temporary extension of the Bureau's ability to continue experimental use of the 427,000 acre feet. I might point out that that effort, along with the next one that I will refer to, indicate to me that a bottoms-up approach to the Endangered Species Act can work if it is given a chance. Much of what you have heard this morning already is conflict in nature. And what has happened with endangered species issues is that when the orders come down from above, the top-down approach, that it inherently brings up conflict. And I hope that as Congress deliberates over the Endangered Species Act revisions that are going to come before it, that they keep a bottoms-up approach in mind, and remember Idaho where a stipulation among water users served to solve the problem, at least on a temporary basis. And in the second example I am going to refer to, perhaps solve it on a permanent basis.

I believe that the other instance that the Governor had in mind was the state of Idaho is in the process of developing a conservation plan for the recovery of bulltrout. This, if successful, would prevent the bulltrout from being listed, and I believe that the Governor was referring to that effort.

Mr. POMBO. So what you are talking about is the state pulling stakeholders together, figuring out what the best way is to recover these runs——

Mr. DREHER. Correct.

Mr. POMBO [continuing]. and is it your opinion that if you actually like talk to the local people who have a little bit of an idea of what is going on, that maybe you can come up with a better idea of how to resolve some of these solutions?

Mr. DREHER. Yes, I believe that is the case. And we have another example here in Idaho that does not involved endangered species, but we have a watershed advisory group that was formed in the Henry's Fork area, it is called the Henry's Fork Foundation. It has been extremely successful in initiating locally driven efforts on improved watershed management to improve water quality.

Mr. POMBO. How would you respond to one of the criticisms that if we bring the states in, if we bring the local communities in, if we bring local people in, that we have to talk to too many people then. In this entire ESA debate that we are going through right now, one of the complaints is that if we bring in the local people and let them have a say, we spend too much time talking to too many different people.

Mr. DREHER. I disagree with that. Because I think from a bottoms-up approach, that does not mean you have to talk to everybody, it means that you rely on local representation to represent people's interests as opposed to Federal representation.

Mr. POMBO. And just to conclude, Mr. Chairman, again to Ms. Davis, how would you respond to that last point, do you believe that it is somewhat important or greatly important or not important at all that we begin to bring in local people to find solutions to some of these problems?

Ms. DAVIS. Mr. Chairman, I would be glad to answer that. Being a politician the way I am, I am elected to my position by my people. I have learned that if you do not give them that opportunity to come in and voice their concerns to you, you are asking for more trouble.

Mr. POMBO. So would you say that the people back in Washington that have criticized the approach of bringing local people in to finding solutions are maybe a little bit out of touch with what is happening in the real world?

Ms. DAVIS. Yes.

Mr. POMBO. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thanks. Mr. Cremeans is recognized.

Mr. CREMEANS. Thank you, Mr. Chairman, and thank you, Helen Chenoweth, for seeing that this Committee is assembled here in Boise, one of my favorite places. That goes to show the political will of one of the minority, if you can consider the feminine gender the minority, is that correct, Mr. Chairman.

Mr. DOOLITTLE. They are a majority in terms of numbers in the world.

Mr. CREMEANS. We have one here and she leads us around.

[Laughter.]

Ms. CHENOWETH. Congress is starting to look like a mall, is it not?

Mr. CREMEANS. I stopped by the way in Salt Lake, and your influence goes all the way to Salt Lake, Helen.

Representative Cuddy, I live in southern Ohio, on the banks of the Ohio River with an average annual rainfall somewhere between 40 and 46 inches a year. To give you an example of the area, Daniel Boone built the same trading post there around 1800 three consecutive times before he moved. That gives you an idea of how much water we have between December and March. We would love to send you some.

When the law authorizing the building of this Dworshak dam—is that correct?

Mr. CUDDY. That is correct.

Mr. CREMEANS. Did it place any priority on fish recovery at that time, or was that dam constructed by and large for a multitude of purposes, included in that would be flood control, energy produc-

tion of which we do have hydroelectric power on the Ohio? Obviously recreation is very important to us and at least to some extent log transportation. Is there any way, or perhaps could you respond to that question?

Mr. CUDDY. Mr. Chairman, Mr. Cremeans, I would be pleased to. First, we would love to have your extra water.

But the original commissioning which I believe was done in the 1960's, if my recollection is correct, and through the Northwest Power Planning Council I believe and the Bonneville Power Administration, and I do not recall any public input or public hearings in regards to it, but they tell me they changed the criteria for which Dworshak dam was to function. I believe that is in one of the attachments that I have attached to my testimony.

And as I remember, downstream fisheries were not at issue at that time. In fact, I think in some of that testimony you will see that they try to disclaim fisheries within the pool, even though recreation was one of the criteria that it was originally commissioned under. Knowing that the north fork of the Clearwater sustained a west slope cutthroat fishery, a steelhead fishery, a rainbow fishery, a whitefish fishery, I do not know how they could disregard the fact that fish should not have been an integral part of the recreation.

Mr. CREMEANS. Well, why does the Federal Government single out that dam for flow augmentation?

Mr. CUDDY. Mr. Chairman, Mr. Cremeans, I believe it is because——

Mr. CREMEANS. You are doing a terrible job on my name.

Mr. CUDDY. Pardon me.

[Laughter.]

Mr. CREMEANS. Cremeans, that is a French name.

Mr. CUDDY. Excuse me.

Mr. CREMEANS. That is all right.

Mr. CUDDY. I believe it is because we have the best water quality and the most storage and the least population along that river and it is not required for irrigation. I think the thing you have to remember is that many people in my area would much prefer right now to have that free flowing river back and never have seen Dworshak Reservoir.

Mr. CREMEANS. I would like to see by a show of hands, would the people in this room support that? If you do, raise your hand.

[Show of hands.]

Mr. CREMEANS. By a show of hands, how many of you would oppose that statement?

[Show of hands.]

Mr. CREMEANS. Your indictment prevails.

By the way, Mr. Grant, I realize my time is running, but could you explain the supremacy clause to me as it concerns the water laws? You hinted on that, but you never did.

Mr. GRANT. Mr. Chairman, Congressman, the United States Supreme Court has determined in a series of cases, going back to the turn of the century, the early 1900's, that on two constitutional bases, state law has supremacy with regard to water. Those two constitutional bases are—or two bases are, first of all, that in the Act of 1866 and the Act of 1870, Congress acknowledged that the

prior appropriation law which had been developed by local custom and rules would be protected. They did not create those water rights, said the Supreme Court. Congress acknowledged the existence of those water rights, and said they will be protected. The United States Supreme Court then has said that because of those two Acts, the Congress acknowledged that state law had supremacy over Federal water rights or Federal law regarding water rights. Then in addition, the United States Supreme Court also decided that because of the equal footing admission of the states into the Union, there was a constitutional base to the state supremacy.

Now the only time that that state supremacy gives way under the United States Supreme Court decisions is when there is a Federal reserved right which comes about when public property is taken out of the public domain. And then it is interesting to note that there is not complete Federal primacy because when there is a Federal reserved water right created by the Congress—and the Congress is the only body that can create a Federal reserved water right because the Supreme Court has said it is created under the commerce clause and under the property management clause of the Constitution. Both of those clauses give absolute power to the Congress to create that right. And the Supreme Court has said that when a reserved water right is created, it must be done so explicitly and then it is only as to unappropriated waters, those waters that have not already been appropriated by state law. So by the development constitutionally by the United States Supreme Court of the state supremacy, unless there was an absolute conflict in some way, the supremacy clause of the United States Constitution does not come into play. Our Supreme Court has already said the Congress has recognized the supremacy of state law. And only the Congress can change that by reserving a water right and can then only change it as to unappropriated waters.

Mr. CREMEANS. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Mr. Cooley is recognized.

Mr. COOLEY. Thank you, Mr. Chairman.

Ms. Davis, in your testimony on the first page, you talked about the Tribe and the United States on its behalf have filed reserved water right claims to protect and maintain the fishing rights of the Tribe reserved in its treaties with the United States in 1855 and 1863, as well as for consumptive use on the Nez Perce Reservation. Can you tell me what quantity of claims have been filed for consumptive use by the Tribe?

Ms. DAVIS. Mr. Chairman, I do not have those figures in front of me, but what I can do for you, Mr. Cooley, is——

Mr. COOLEY. Can you give me some idea about what quantity you have applied for? Any idea at all?

Ms. DAVIS. No, I cannot, I am sorry.

Mr. COOLEY. That is a very important issue. Can you tell me what quantity has been claim filed for the fishing rights?

Ms. DAVIS. Mr. Chairman, in answer to that question, I do not know where you are from, Mr. Cooley, I believe——

Mr. COOLEY. I am asking because the United States government has filed water rights for the tribe, according to even your testimony. I just want to know the quantity. That is not adverse to answer or evasive, it is just asking what quantity.

Ms. DAVIS. Because the Clearwater River runs within the boundaries of the Nez Perce Reservation, it would be a lot. I do not have the right number though.

Mr. COOLEY. OK. On the claim for the fishing rights of the tribe, is this for commercial use, tribal use, could you explain that part of the filing?

Ms. DAVIS. Yes, Mr. Chairman, that is with the fisheries within the boundaries of the Nez Perce Reservation and the ceded areas of the reservation. The Nez Perce Tribe is very concerned with the Chinook fishery and we are a member of the Columbia River Tribes, the four tribes along the Columbia River. We also have other species of salmon that we have been watching very carefully. We have a large fisheries department that has been working with the state of Idaho, the state of Oregon and the state of Washington.

Mr. COOLEY. Does the tribe fish commercially as part of your economic stability?

Ms. DAVIS. We do participate in the Zone 6 fishery down on the Columbia River, which is part of our ceremonial catch. We do not have a big commercial fishery.

Mr. COOLEY. So you do not sell any of the fish that you catch?

Ms. DAVIS. Everything that we catch we keep as a tribe or our tribal members keep.

Mr. COOLEY. OK. Mr. Keys, I need to ask you something that was brought up in my mind last night after yesterday's testimony. And by the way, I want to thank the Chairman and Ms. Chenoweth for attending my meeting over in Oregon.

Under the Endangered Species Act—because you refer to that as living underneath that piece of legislation and following it through—is there not in the section there, I think it is in Section 15.40, penalties and enforcement of the Endangered Species Act, is there not a clause in there that talks about commercial takings of endangered species, or any taking of endangered species?

Mr. KEYS. Mr. Chairman, Mr. Cooley, I am not intimately familiar with the language of it, but I understand that there are provisions in there for penalties for taking of an endangered species.

Mr. COOLEY. OK. Can you tell me what species are threatened or endangered in this Snake River/Columbia Basin?

Mr. KEYS. Mr. Chairman, Mr. Cooley, yes, the current salmon species that we are working with, the Snake River sockeye salmon, the Snake River summer, spring and fall runs of chinook are listed as either threatened or endangered. We are working with the four snails and limpet on the mid-Snake River; working with the eagle, the bald eagle, in several places; the white sturgeon has been listed in several places; the Bruneau snail is not within our jurisdiction, but it has been listed. Those are a few of them.

Mr. COOLEY. In the law—and I think the Bureau should take a look at that—in the law, if I am not mistaken, there is to be no taking of an endangered species. Is chinook salmon listed as endangered?

Mr. KEYS. Mr. Chairman, the chinook is either threatened or endangered. There are provisions in the Endangered Species Act for taking of fish under certain circumstances. There are many factors involved in that. The reasonable and prudent alternatives to not take a fish is one that we deal with on a daily basis, and since we

got a jeopardy opinion this past year, those reasonable and prudent alternatives are what we are operating under now.

Mr. COOLEY. So there has been no definitive answer concerning taking of endangered species, commercial or otherwise?

Mr. KEYS. Mr. Chairman, Mr. Cooley, the biological opinion talks about the jeopardy to the species and the reasonable and prudent actions that can be taken to keep it from going to extinction and yet allow us to live in the basin. Economics is also a part of the evaluation there.

Mr. COOLEY. Thank you.

Mr. DOOLITTLE. OK, Mr. Hastings.

Mr. HASTINGS. Thank you, Mr. Chairman, and I want to thank Congresswoman Chenoweth for doing this also. It is a pleasure for me to be down here. My Congressional District is very similar to this area in central Washington.

Mr. Grant, I really hesitate asking this question because I am not an attorney. Now when you start getting into law, you are really treading on something. Some people like the fact that you are not an attorney, some people, you know, wish that you were in this position. But when you responded regarding the supremacy clause, you were talking about water rights, is that correct? I mean when Mr. Cremeans asked you that question about supremacy clause, and in your testimony you were referring to supremacy clause as it relates to water rights, is that correct?

Mr. GRANT. Mr. Chairman, Congressman, yes, that is what I was directly responding to.

Mr. HASTINGS. Now as an extension of this—and your conclusion is that the supremacy clause does not apply, the states are supreme in this situation, in your interpretation, did I hear that correctly?

Mr. GRANT. That is correct.

Mr. HASTINGS. What impact then, as that relates to the Endangered Species Act, does the *Sweet Home* case in Oregon have? Because that had to do with habitat and not water, or maybe it did have to do with water—I do not think it had to do with water, I think it was just real property. But what—is there any connection between *Sweet Home* and what your interpretation is, or is there a threat because of *Sweet Home* as that relates to the supremacy of water in your understanding?

Mr. GRANT. Mr. Chairman, Congressman, the *Sweet Home* decision creates a threat, but we do not believe that it really does anything to attack the structure of what I have analyzed on the supremacy clause with regard to the water rights because of the fact that the United States Supreme Court has taken the position that I have outlined from 1900 on and we do not expect to see this Court make a switch in that 95 years of legal history with regard to water rights, because of the very unique nature of water and the prior appropriation doctrine, which has been recognized by the Congress and the United States Supreme Court. *Sweet Home* is a disturbing case, but what it does not answer is the taking issue from the standpoint of compensation to the person whose private property is taken. And that will be the next step that has to come along with the *Sweet Home* decision. *Sweet Home* is going to have to be read, I think, in terms of reading Dolan, which is the Su-

preme Court case regarding the Oregon zoning taking, from the standpoint that after *Sweet Home* will come a second step in that litigation and that is the takings and the constitutional requirement of payment for that taking.

Mr. HASTINGS. Let me ask you this then, would it be prudent on our part as we address the Endangered Species Act and rewriting of that, would it be prudent for us to address some of these concerns? Because you said that is a threat. Would it be prudent for us to do that?

Mr. GRANT. Mr. Chairman, Congressman, we certainly would hope that you would do that. We believe that private property rights are very critical from the standpoint of the water rights that we are discussing today as well as private property itself. Our county land use plan which we have developed and attempted to get the Federal agencies to coordinate their planning with us, makes a heavy point of that, and we believe that that is one of the critical areas that should be addressed by the Congress when they review the Endangered Species Act.

Mr. HASTINGS. OK, good, thank you very much, Mr. Grant.

Mr. Keys, you alluded in your statement to the fact that what you are trying to do is to satisfy the stakeholders. Who are the stakeholders that you refer to in your statement?

Mr. KEYS. Mr. Chairman, Mr. Hastings, the stakeholders in the water right activities that we are doing are two-fold. The first are those people who would benefit from keeping the salmon from going extinct. The second group of stakeholders are those irrigation districts, municipalities, other water users that hold contracts with the United States government for delivery of water out of the reservoirs.

Mr. HASTINGS. Are they all equal? Is anybody more supreme than others?

Mr. KEYS. Mr. Chairman, Mr. Hastings, they are all equal, depending on their contract. There are contracts with earlier priorities in reservoirs that may have priority over another. They follow the contract dates and the water rights upon which they depend.

Mr. HASTINGS. One of the problems that I am having in my district, because I have the Hanford Nuclear Reservation in there, and how to take care of that is the issue of stakeholders, and it seems to me in the discussion that we have had concerning that issue, that you have people that you wonder why they are even involved in this whole business, that are identified as stakeholders. And when you say something as broad as stakeholders, that raises in my mind kind of a red flag.

One other question, I see my time is coming out, the whole discussion here, as I understand it on the 427,000 acre feet is the willing sellers. And apparently, at least on the testimony that I have heard you give here and the testimony in your written statement, you imply I guess that there are enough willing sellers but yet Mr. Dreher was saying that going through this drought period, there certainly is not enough water. What happens if there are no willing sellers? What do you do then?

Mr. KEYS. Mr. Chairman, Mr. Hastings, we do not know whether there are enough willing sellers yet or not. That is why the biological opinion gave us until 1998 to see what is out there and whether

we can actually firm that up. If we get to the situation where there is not enough water to provide the 427,000, we actually go back into consultation under the Endangered Species Act for the Federal Columbia River power system to see what other options might be available. It does not put us into a take situation.

Mr. HASTINGS. It does not put you into a take situation?

Mr. KEYS. Mr. Chairman, Mr. Hastings, that is correct, it does not. It puts us back into consultation to see where other leeways are in the system to help protect them during that drought year.

Mr. HASTINGS. Thank you, Mr. Chairman.

Mr. DOOLITTLE. I am going to recognize myself for the five minutes and ask the timekeeper to give me the red light in four minutes. The final minute I shall yield to Ms. Chenoweth who has an additional question to ask.

Mr. COOLEY. Could I be considered for one minute too?

Mr. DOOLITTLE. No. I have only four. Do you want to take one of those?

Mr. COOLEY. I would like one of those.

Mr. DOOLITTLE. You ask unanimous consent and get another minute for yourself, all right?

Mr. COOLEY. Yes.

Mr. DOOLITTLE. Any objection?

[No response.]

Mr. DOOLITTLE. All right, after Ms. Chenoweth, we will get to you.

[Laughter.]

Mr. DOOLITTLE. Let me ask if Susan Martin could please come up here and wedge your way in. I know we have not left you any space, but there is one seat up here if you can get to it. Thank you, that was nice, Mr. Dreher.

All right, Ms. Martin, I read in National Geographic there are some 300 species of freshwater mussels, and those are found mainly in the southeastern United States, although maybe we have some of them here. We have heard about snails and limpets; how many fish and wildlife species have been listed in the Snake River Basin? What is the total number?

Ms. MARTIN. Mr. Chairman, Mr. Keys gave a fairly accurate representation. Without tallying on my fingers and toes, I think statewide in Idaho we have 17 species.

Mr. DOOLITTLE. Seventeen. And how many are proposed for listing in the Basin?

Ms. MARTIN. At this time, Mr. Chairman, there are no proposals active. There is a re-evaluation of the Bruneau snail taking place.

Mr. DOOLITTLE. No proposals active. Do you know how that makes Californians feel to hear that? We have 258 or something. What do we have, Mr. Pombo?

Mr. POMBO. 168.

Mr. DOOLITTLE. 168 listed. And how many pending?

Mr. POMBO. About 250.

Mr. DOOLITTLE. 250 pending, OK.

Are there any conflicts over the management of water for species listed in the Basin, both by Fish and Wildlife Service and by NMFS?

Ms. MARTIN. Mr. Chairman, to this point, we have been able to coordinate our consultation activities so that we have not had conflicts between different listed species.

Mr. DOOLITTLE. OK. Mr. Keys, you kept referring to the Federal Government or the Bureau owning water. Does it own water?

Mr. KEYS. Mr. Chairman, the Bureau of Reclamation owns storage space in the reservoir system, as other spaceholders do. And basically when we own storage space, we own the yield on an annual basis from that storage space, plus whatever carryover is left after the previous year.

Mr. DOOLITTLE. Mr. Dreher, the Bureau of Reclamation has applied for a change in the nature of use and they are going to go—is it your department who is going to determine whether to allow that or not?

Mr. DREHER. Unless the state legislature would preempt us in some manner, eventually——

Mr. DOOLITTLE. Which they could do?

Mr. DREHER. They could do—eventually we would have to make a determination.

Mr. DOOLITTLE. And what is the water presently being used for? Five million acre feet is an awful lot of water.

Mr. DREHER. Yes. In Idaho, it is primarily being used for irrigated agriculture.

Mr. DOOLITTLE. And what standard will you use to determine how to make your decision?

Mr. DREHER. I probably should not answer that. I am the hearing officer and the hearing has been stayed.

Mr. DOOLITTLE. OK. Well, I do not want to cause you a legal problem with that. Is the criteria set forth someplace?

Mr. DREHER. It is set forth with a lot of gray.

Mr. DOOLITTLE. OK. In your testimony—or maybe it was the Governor's testimony, but I think you are sort of standing in his shoes, at least in part for this—anyway in the Governor's statement, he states, "We are concerned, however, that in a dry year when supplies from willing sellers are not sufficient, that the Bureau will release water from storage space contracted to agricultural water users who need the water for their livelihoods. Now, Mr. Keys, how do you respond to that piece of the Governor's testimony?

Mr. KEYS. Well, Mr. Chairman, let me clarify the 5.2 million acre feet before I answer that. The 5.2 million acre feet is the total storage space covered by the water rights that Reclamation holds for those facilities. Inside that storage space, most of that space has been contracted to those spaceholders and it is actually a property right that they hold. Reclamation itself holds the property right to about 125,000 acre feet of active storage space in that 5.2 million, and that is what we would use.

Mr. DOOLITTLE. You mean, you would use the 125,000 acre feet?

Mr. KEYS. That is the water that we hold, plus whatever we could rent from a willing seller or a willing renter.

Mr. DOOLITTLE. So you are not trying to change the balance of the water that you say is a property right?

Mr. KEYS. Mr. Chairman, that is absolutely correct. What we are trying to do is make it possible for any holder of a spaceholder con-

tract to then rent water to us from that portion of the 5.2 million acre feet that they own. That is the water right change that we are working with.

Mr. DOOLITTLE. Thank you. OK, Ms. Chenoweth, your minute is now.

Ms. CHENOWETH. I am recovering. Mr. Keys, I would like to ask you, a lot of this is being done on a biological opinion, the Endangered Species Act requires that we go through the NEPA process too, and I am concerned that with the stipulation agreement as well as the filing on 5.2 million acre feet of water, not going through the appropriations process where there is open public hearings on this, that if we avoid the NEPA process and if we avoid the application for a water use process in which we have open public hearings, for the purchase of 427,000 acre feet, if we are going to use it year after year, that we avoid the public hearing process. Have you or are you contemplating a NEPA action, as the law requires?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, in some instances we have already accomplished NEPA on the release of water for salmon. Specifically, that water that we are using out of the Cascade and Deadwood Reservoirs, we covered with NEPA about five years ago. When we get into a situation of purchasing a water right; yes, we intend to do NEPA.

Ms. CHENOWETH. To file for the change of the nature of use of 5.2 million acre feet would be a major Federal action. Have you done a NEPA study on that before making the filing, as the law requires?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, the 5.2 million acre feet of space that is involved in this thing will not change. The ownership will not change, the use will not change. It allows those people to use their storage space in accordance with state law, which they have been doing ever since the reservoirs were built.

Ms. CHENOWETH. This does complicate Idaho law quite a lot, but even the filing of 5.2 million acre feet is a major Federal action. Will you do a NEPA evaluation, environmental impact statement, economic impact statement, on that action, as the law requires?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, if it is necessary, we will do it.

Ms. CHENOWETH. Thank you.

And then one very quick question. In my letter to you, I asked about any of your employees approaching any of our irrigators individually without their attorneys present or saying that when their contracts were up they would not have their water any more, have any of your people done that—for the record.

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, we have talked with irrigation districts who have water service contracts which run out in six, seven, ten, 11 years, and talked with them about the possibility of us purchasing the remaining years of those contracts.

Ms. CHENOWETH. And were their attorneys present when you talked to them?

Mr. KEYS. Mr. Chairman, Ms. Chenoweth, in most cases not.

Ms. CHENOWETH. OK, thank you.

Mr. DOOLITTLE. OK, Mr. Cooley, you are recognized for your one minute.

Mr. COOLEY. I have a document in front of me prepared by the Bureau of Reclamation from Mr. Keys, it is called the Snake River Basin Water Rights Adjudication dated September 26, 1995. This is for Ms. Davis' information and for the people to hear this. The Department of Justice has filed specific claims on behalf of the United States Bureau of Indian Affairs for the treaty reserved water rights of the Nez Perce Tribe claiming for instream flows, fish habitat, channel riparian maintenance or for greater than 36 million acre feet of the water of the Snake River, which is greater than the average annual flow at Lewiston, Idaho with a time immemorial priority date. I just wanted you to be aware of that, Ms. Davis, since you did not know that.

Ms. DAVIS. Yes, thank you. Mr. Chairman, if I may, it was not in our written testimony, but we have provided renting figures to the Congressional people and I was going to mention that to you.

Mr. COOLEY. I have read all of those things that you provided and it is not there.

Ms. DAVIS. I know, it is not in there, that is what I was saying, so we were going to furnish that to you.

Mr. COOLEY. And I would say I guess in conclusion that if this were to prevail, all the discussions we are having here today mean nothing because 36 million acre feet, greater than the average annual flow at Lewiston, Idaho, with a time immemorial priority date. There is no water. Mr. Dreher, there is no water.

Mr. DOOLITTLE. OK, that concludes the questioning of this panel. We will thank the members of the panel and we will ask you to respond to such additional questions as members of the Subcommittee may have, and the record will be held open for the return of those responses.

It is the intention of the Chair to declare a five minute recess, following which we will come back and hear from panel number two.

[Recess.]

Mr. DOOLITTLE. We are going to reconvene. Scott Campbell, Viki Purdy, Steve Campbell, Wendy Wilson and Pat Takasugi.

OK, do we have our five witnesses? All right, if you five will raise your right hand.

[Witnesses sworn.]

Mr. DOOLITTLE. Let the record reflect that all five responded in the affirmative.

Ladies and gentlemen, we are really under the gun to complete this hearing and have people make their airplanes. So I am going to be strict in the enforcement of this five minute rule, and when you hear that tap of the gavel, bring it to a close right away, please. And there is no time for unanimous consents or anything else in order to make the time.

With that, we will invite Mr. Scott Campbell to begin.

STATEMENT OF SCOTT CAMPBELL, ESQUIRE, ELAM & BURKE, P.A.

Mr. SCOTT CAMPBELL. Thank you very much, Mr. Chairman and members of the Committee. It is an honor and a pleasure to have the opportunity to testify before you again. My name is Scott Campbell, I am an attorney practicing here in Boise, Idaho. My pri-

mary area of practice is in water resource law and environmental litigation. A number of the issues you have already spoken to this morning, I am actively involved with. I represent a number of irrigation districts, canal companies, municipal and industrial water users. Today I am speaking on behalf of the Payette River Water Users Association, the Pioneer Irrigation District and the Settlers Irrigation District.

I have some prepared written testimony which I submitted, and I turn your attention to that. However, because of the comments of Mr. Keys and the fact that his comments may not be addressed in questions to me, I would like to provide some clarification from my perspective to what I believe is perhaps a misunderstanding, at least from my opinion, or a mischaracterization of the actual facts with regard to the applications—because there are some 16 plus applications—to change the nature of use of 5.2 million acre feet of water in Idaho.

Contrary to what Mr. Keys testified to, and I am not casting aspersions upon his observations, but he is not a lawyer, his response to you that the 125,000 acre feet of water that the Bureau supposedly controls as uncontracted space is all that is changed is not the case. The water right for all 5.2 million acre feet of storage space in those reservoirs will be changed permanently by the completion of this process. The addition of some seven additional non-irrigation uses, primarily environmental uses, salmon flow augmentation is just one of those changes—those water right changes were not sought by the water users, they were not approved by the water users, contrary to Idaho state law. There is a specific statutory requirement that if water rights which are being used by water users, and these Bureau of Reclamation facility water rights are those kinds of water rights, are changed, that the consent of the water user must be obtained. That has not been done in this case. You would not have 88 objections by water user entities throughout the state, the southern portion of this state, filing objections, hiring lawyers like me, spending thousands upon thousands of dollars hiring engineers and hydrologists to fight this thing if they had consent, if they wanted this change. So I want that impression to be corrected right now. I am not saying Mr. Keys deliberately mislead the Committee, I am saying that he is wrong.

Secondly, I think it is very important in the context of what the Bureau is doing across the west to understand that this effort to change the nature of use of 5.2 million acre feet dovetails with the water conservation regulations that they are proposing, dovetails with the memorandum which I attach to my testimony from Dan Beard, that clearly indicates the Bureau wants to convert traditional reclamation use of water for irrigation and municipal use to environmental purposes. Without question, the evidence is there. Without question, that is the policy direction from the top of the Bureau, the top of this administration, the Clinton administration. They want the water for other uses, supposedly public uses, but they want the water for uses that are not traditionally reclamation uses. That, in my judgment and the judgment of many other water attorneys, violates not only state law but Federal law, violates the Reclamation Act, violates project authorization, specific actions by Congress dictating that the projects be used for specific purposes

and I think that this Committee as well as the Congress as a whole needs to keep in mind that under the guise of the Endangered Species Act, the Bureau of Reclamation is taking concerted actions which are clearly illegal. They will be fought by the individuals but at great cost. The economic impact I think as Congresswoman Chenoweth indicated is dramatic, yet a NEPA analysis has not been done. The emotional impact upon individuals who are contributing positively to our agricultural economy here in the west is dramatic, as you will hear from other witnesses today.

And I think if nothing else from these hearings, which I congratulate Congresswoman Chenoweth on bringing you to Boise today, I congratulate you and thank you for coming here and listening to us here out in Idaho—if nothing else, you can do something, you can make a difference because there are certain people, in my judgment, in the administration, who have a clear agenda to destroy the fabric of the west which was created and built by virtue of the 1902 Reclamation Act. That fabric, that west, this community is the result of those efforts by Congress in 1902 and now by virtue of the decisions of a select few, that whole fabric is being torn asunder.

I thank you very much for your time.

[The statement of Mr. Scott Campbell may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Our next witness is Viki Purdy.

STATEMENT OF VIKI PURDY

Ms. PURDY. Thank you, Chairman Doolittle, Committee members. My name is Viki Purdy, I farm in Eagle with my husband and two daughters. We have 129 acres and we milk 76 head of Holsteins.

In preparing this testimony, I spoke with a lot of other farmers, made a lot of phone calls to a lot of different people. So some of what I say here has been echoed by those people to me in the last few days.

I appreciate the opportunity to speak with you this morning. I hope that I can convey to you the depth of frustration and growing animosity the farmers I work with are feeling toward the Federal Government. While I have respect for each of you individually, I have little respect for the Federal Government as a whole. Congresswoman Chenoweth, you are certainly our shining star these days.

In my latest experience with the Federal Government, I was asked to handle the protest regarding the change of nature of use of Idaho's storage water filed by the Bureau of Reclamation on behalf of our canal, New Dry Creek. We filed a simple letter of protest. We felt it unnecessary to use the services of our attorney at this time. Following the writing of the stipulation between the water users and the BOR, I spoke to many different people in the process of seeking information on this document to address our concerns before we signed it. I was told repeatedly that this was the best course to follow to hold off hearings and court proceedings for a year in the hope that the ESA would be amended and state law could address the situation as well. I now fully understand that we have—or feel like we have been betrayed, and maybe that

is not the case as of yet, but that is the way we feel. And I have no hope that the ESA, which should be repealed as completely unconstitutional, will even be amended.

We did not feel comfortable in signing the stipulation as we, among many other water users, were alarmed at the BOR's desire to rely on the National Marine Fisheries Service' biological opinion. Their opinion seems to be all there is. Science is non-existent. When we did not sign the stipulation by the deadline stated, we began receiving phone calls. The first was from Tony A. Sullins, attorney for the Bureau of Reclamation. He asked my husband, Dana, President of our canal, why we had not signed and stated we needed to get this done. I did not put it here, but my husband felt like it was a pressure call. We then received a call from our attorney, Bruce Smith, who we had not previously contacted, who had been previously contacted by Mr. Sullins. Mr. Smith left a message on our answering machine stating that this was the best way to proceed, the bugs had been worked out and that if we did not sign, we would be subject to a long hearing process and costly legal fees.

The next call was from Idaho Department of Water Resources' attorney, Phil Rassier, who simply asked if we were—he just simply wanted us to call him back and let him know if we were going to sign. He also left a message on our answering machine—we are not in the house too often. We asked ourselves why the concern with such a small canal company, with only 3000 acre feet of storage water.

As if that was not enough, the ultimate red flag was the letter we received from the Department of Interior signed by John Keys. This letter angered us so much that we felt we did not want our signature on any document that had anything to do with the Federal Government. This same letter, or one similar, was sent to at least five other canal companies, who all reacted the same as we did. And I am told this morning that there are others that received those letters. They all stated the letter was viewed as a threat and they would not even consider selling one drop of water. One canal company president told me this morning, as he stopped by and brought me another one of those letters that they felt like in the year 2006 when their contract was up, that the bids would just be put out to anyone and anyone could bid this water, these contracts, and environmentalists would bid those and they have a lot more money than we do, and we would be shot down anyway, so why even talk to these people, why even deal with them now.

This letter indicated that the Lucky Peak water is targeted as part of the 427,000 acre feet needed for the salmon flush and further states urbanization and the fact that some canal companies have never used their entire allotment, suggesting that we do not need it at all. It states "near-term permanent acquisitions of storage space may need to take into account Reclamation's change of use application currently before the Idaho Department of Water Resources. It should still be appropriate to complete long-term rentals and enter contracts for permanent acquisitions at this time." It continues to say while we will be given consideration for renewal of contracted water when our contract expires in the year 2006, it will be the BOR that decides whether or not we need it.

In our worst drought year, we used all but 200 acre feet of storage water. We are very frugal with our water and our dollars, which is required by our contract with BOR in Section 25(a) entitled Economical Use of Water. It states that the BOR will take such action as may be necessary to correct wasteful, inefficient or uneconomic use of water. Now they use that as a means to take our storage rights. Did they forget that clause or did they change their minds and forget to tell us? Storage water is very expensive. All five canal companies have asked the question, how can the BOR charge irrigators operation and maintenance costs for decades, plus construction costs at storage reservoirs and then turn around and stab us in the back. I guess the answer to that is this is the Federal Government and they can do whatever they want.

I now can say without a doubt in my mind that aside from Helen Chenoweth and the Governor's Office, there is not a single state or Federal agency that is on the side of agriculture. Regardless, we are pretty tough and we will fight to the end. But knowing the government's tactics, we signed the stipulation with an attached letter following my final conversation with Phil Rassier. He could not answer my questions because the law prevented him from disclosing information as the Idaho Department of Water Resources was acting as the court in this case. So we did not want to be made an example of.

We now have had to double the price of our water—actually this was done two years ago to cover legal fees, knowing full well that if we keep the attorneys in business long enough, we will be out of business. Water users are sued by so-called environmentalists using government grant money, our tax dollars in the form of grant money. Our tax dollars are used to pay for Federal lawyers that in turn sue us or fine us for some regulation violation. The Federal Government steals our profits in the name of taxation and then expects us to abide by every over-zealous, whimsical regulation, yet many of these people know nothing about agriculture.

The number of government agencies desiring to control our water, our land and our ability to earn a living is so numerous we have lost count. I ask you which government agency will you entrust with our future food production needs? As a girl who grew up in the city, I can tell you——

Mr. DOOLITTLE. Ms. Purdy, can you wrap up? We just do not have time. This is great testimony, it is no judgment on you, and we will incorporate it all in the record.

Ms. PURDY. Can I——

Mr. DOOLITTLE. Yes.

Ms. PURDY. In closing, I must say that I am one of the angriest farmers of all, because I am the wife of the best agriculture has to offer. I live with the irrigator whom you threaten without just cause and it is time you left us alone to do what we do best.

No water, no crop, no farm, no food.

Thank you very much.

[The statement of Ms. Purdy may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Mr. Steve Campbell is recognized.

STATEMENT OF STEVE CAMPBELL

Mr. STEVE CAMPBELL. Mr. Chairman and members of the Committee, my name is Steve Campbell. I live in the Meadows Valley, 130 miles north of where we are today. My great grandfather and two of his brothers homesteaded three ranches in that valley 115 years ago. Members of our families have made their living with cattle through grass production since that time. Our grass is known throughout the western livestock industry as one of a handful of premier areas for summer grass for cattle.

What we do has never been easy or a get rich quick scheme. The early beneficial use filings on stream water in this century and the construction of water storage reservoirs has allowed us to continue with our niche in the cattle rearing cycle.

Until the recent past, our uncertainty about water has been what will Mother Nature provide next year? Lately it seems that the rules are changing. In 1978, we were all required to file and pay a fee on our water rights. Then in 1988, we had to go to Boise to file and pay again. Now we have had to join together to hire legal counsel to defend ourselves against the Federal and Indian instream flow claims.

Approximately 90 percent of the water users in our area have joined our group. That level of participation from a group of people who are typically of the most independent sort is highly unusual.

After we personally pay for our own legal counsel to protect our water rights, we see our tax dollars being used by Federal institutions to file against our water rights. It is also very frustrating that the Federal and Indian claims were done in such a manner to make it very cumbersome and expensive for us to object. This tactic forced our small drainage to file almost 200 objections to protect our water. The magnitude of the effort to object to Federal claims simply overwhelmed many and forced others to seek expensive legal assistance.

As I understand Idaho water law, as beneficial use claimants, we have to pay our fees, must wait for a field inspection to show that the place of use and quantities claimed are accurate and show almost continuous use of that water. The Federal and Indian instream claims go by a different set of rules. If no one objects to their claims, they are granted. They have exempted themselves from the filing fees. Obviously they do not have to show continuous use. When was the last time the Indian or Federal groups requested their claimed 130,000 cubic feet per second to flow past Lewiston?

I just heard Tuesday that the Forest Service withdrew 98 percent—that is all but 70—of their claims. This is good news. What would it have saved the water users in the state if the Forest Service had not filed these frivolous claims in the first place? If Colorado sets any precedent, the Forest Service will refile these claims. Are there any rules as to how the government agencies have to behave?

I was taught that controlling your water when you irrigate makes the major difference in the ranches in our area. If we had no control of our water, we would have no control of our land. The Federal Government has been looking for any means to increase their control over our private property and our lives. The Endan-

gered Species Act, wetlands regulation and the Clean Water Act have been very effective for them. These Acts are used to jerk us around, to take measures that have no measurable impact on the environment or the species of concern, but real impacts on us, both emotionally and economically.

We need Congress to demand accountability of the Federal agencies. Specifically in the case of the Federal threat to our water rights, we need to have the involved agencies define the social and economic impact of their proposed actions. They need to have public participation, particularly with the affected people, to hear what they are doing to us and to tell us why they are doing it. We need to know why the Forest Service still has 70 water right claims. Federal Water right claims should require the same standard of beneficial use as individual claims. How do we protect ourselves from a government that changes the rules and regulations to further their wishes.

Two years ago, I heard Congresswoman Chenoweth say I love my country but I fear my government. I fit into that category, but please do not substitute the word "hate" for "fear."

Thank you for your time.

[The statement of Mr. Steve Campbell may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Wendy Wilson is recognized, representing Idaho Rivers United.

STATEMENT OF WENDY L. WILSON, EXECUTIVE DIRECTOR, IDAHO RIVERS UNITED

Ms. WILSON. Thank you, Mr. Chairman. My name is Wendy Wilson, I am the Executive Director of Idaho Rivers United, which is a citizen based membership organization here in Idaho. We are not affiliated with any of the national organizations, but we have been actively involved for the last five years trying to protect the right of salmon and steelhead to exist in the state of Idaho.

I do not know today who to be madder at, the Federal Government or the state government. But I think we have a general agreement that we are here to complain about the government. So I have a lot of complaints.

The Bureau of Reclamation—I signed the stipulation agreement that was circulated, not because I thought that it was going to do anything except postpone a big fight until next year, but the Bureau has been out there trying to enforce the biological opinion and the record of decision made on that biological opinion regarding salmon, which are an endangered species. The Bureau is just the tip of the iceberg. What we have not talked about today is BPA, Army Corps of Engineers—the other Federal agencies that run the hydropower system.

Make no mistake about it, the ESA is the only reason that the feds have not killed all of Idaho's salmon yet to date. They have been working on it for about 40–50 years and they have not quite got it done. The feds should be the ones to fix the problem, and under the Endangered Species Act, they have been trying to make the Bureau fix the problem. However, you have to look downstream.

There are a couple of things I think that we need to use sort of as a framework for solving this problem. And I am not here today to offer the permanent long-term solution. However, I think that we have to, number one, all agree that extinction is not an option. All this gobbledygook about water rights is not sacred. We change the law according to modern needs and extinction, in the modern society, especially when applied to a great and noble species like Idaho salmon, should not be an option. If you decide to kill one species, where are you going to stop? Once we pull apart the web of life, you do not have much left for us to live on.

The second I think important element of our framework is that fish have to swim, and you are going to have to figure out a flow-based solution that gets the fish to the ocean. The Federal Government is clearly to blame for the loss of Idaho's wild fish and they have some clear choices to make between flow augmentation from Idaho's reservoirs and lowering the Snake River reservoirs below Lewiston during the migration season to let the fish by. It cannot be solved on a local level, it cannot be solved on a state level, you have to solve it with the Federal mandate to save the fish.

The smart bet is on lowering the lower Snake River reservoirs during the migration season. It would take a lot less water and it would not be as major an impact as has been discussed to date. The problem is that the feds will not even admit their dams killed the fish. Everybody in Idaho knows that, but the feds will not admit it. They hide behind the killer ocean. There is something out there that is killing our fish. Well the Rogue River chinook had a near record year this year. Alaskan streams have had a near record year this year for salmon returns. You cannot ignore it, they all swim in the same killer ocean and they do not seem to make it back to Idaho.

Fourth point, quit barging. The feds admit that the barging experiment has failed. The Army Corps has been doing it for 20 years now and now we have flow augmentation to make barging better. The 1.9 million acre feet that was used out of Dworshak dam last year for flow augmentation was to make barging work better, it was to push the fish to the collection facilities at the first dam. Last year, they did not spill the fish, they pushed them downriver with flow augmentation water. That is dumb.

Number five, give us true regional control over the Federal hydropower system. That is what we need. The state and tribal fisheries agencies have been in agreement for several years about the need to improve conditions for migrating fish. They came out with a detailed fish operating plan in 1993. The Army Corps of Engineers is the rogue agency here, they are the ones that are not doing what the region wanted.

Quit supporting the Federal status quo on the lower Snake River. We cannot afford it. There are no irrigation water rights in Lower Granite Dam, there is no flood control space in Lower Granite Dam. If we used 200,000 acre feet that is stored behind Lower Granite Dam, you could save 6.5 million acre feet of flow augmentation water out of Idaho. What is the hangup?

The last point I want to make is to quit protecting the aluminum companies. Just last week, the Department of Energy signed contracts with the direct service industries that amounted to a multi-

million dollar giveaway. They are the ones that are benefiting from the hydropower production in the lower Snake River below Lewiston. If we reduced our load commitment to them, those dams would not even be needed. We could ship grain by train from Lewiston, we could restore the Snake River below Lewiston and have a harvestable surplus of salmon and steelhead for Native Americans, sport and commercial fishing industries. It used to be a one billion dollar a year industry in the northwest. We seem to be willing to throw that away.

In other words, we are paying for cheap aluminum cans all over the world with dead Idaho fish. If we can all agree to focus on that problem, which is really where our Idaho state water rights are going, then the better we will all be.

[The statement of Ms. Wilson may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Mr. Pat Takasugi is recognized.

STATEMENT OF PATRICK TAKASUGI

Mr. TAKASUGI. Thank you, Mr. Chairman. Chairman Doolittle, members of the Subcommittee and Representative Chenoweth, it is an honor and a privilege to have this opportunity to testify before your Subcommittee on the issues that are critical to me as one of over 20,000 farmers and ranchers in Idaho. I also wish to express our deepest gratitude for all members of the Subcommittee in making the effort and taking the time to visit with us Idahoans during a very busy Congressional year.

My name is Pat Takasugi. I am a third generation farmer. My wife, Suzanne, and I farm 950 acres of irrigated cropland near Wilder and Homedale, Idaho. 790 of these acres are leased from various landlords, with all the irrigation water coming from either BOR storage or from the Snake River.

May the Committee accept and file my written testimony and in the next few minutes I wish to share some of my personal philosophy and digress a bit from my written testimony.

The desperate situation that we Idaho farm and ranch families face today can best be described as a breaching of the American social contract with its laborers of the land. Idaho was not a Garden of Eden when our forefathers arrived and there were no BLM, Forest Service or other Federal Government employees working beside them digging ditches, pulling out sagebrush or fighting other natural problems. This contract with America was for settlers and sodbusters to create productive cropland from desert and mountain lands. Because of our success, America has grown, survived world wars and has been able to expand in other productive areas, because farmers and ranchers have supplied them with the most basic of needs, and that is food.

Today, there are those who advocate the public interest in water and land use issues, referencing recreation, wildlife, or pure aesthetics. Using ranks of lawyers both on government payrolls and on preservationists' payrolls, these advocates have used regulations to erode the principles of American agriculture—water and land use and private property rights. These short-sighted, self-preserving proponents fail to realize that they jeopardize our national security and endanger the most basic of needs of the American people. The socialist thinking of the public interest destroyed agriculture in the

USSR, and it is this thinking today which threatens to destroy agriculture in Idaho.

It is noble to want to preserve nature, to save fish; but noble ideas will not feed the children. This "Wizard of Oz" government mentality that knows what is best is turning private property into public property through government regulations. We farmers and ranchers will soon be only serfs and vassals, tending the land under the strong hand of a bureaucratic tyranny.

People are not standing in line to farm and ranch, and those who are currently farming are discouraging their children from farming. The pulse of Idaho agriculture is getting weaker with every additional regulation thrown on our backs and it is just getting too tough. In one word, our biggest problem is over-regulation.

Agriculture in Idaho is at the brink. Our water is being claimed by the U.S. Fish and Wildlife Service, the Nez Perce Tribes, the Bureau of Reclamation, the U.S. Forest Service, the Shoshone-Bannock Tribes, the Northwestern Band of Shoshoni and the Shoshone-Paiute tribes. More water and land use regulations are forever looming over us from the U.S. Corps of Engineers, the Bureau of Land Management, the Bureau of Reclamation and other agencies. The state of Idaho must retain control of water and the use of its land.

While I was visiting with some ranchers in Challis, Idaho, it became clear, crystal clear, that the government has chosen to become an entity of itself and that those of us who may appear to be in the way of their masterful management of public and private lands, water use and the ESA, can be regulated out of the way. The case for local control and management of Idaho's water and lands must be supported before those of us who are laborers of the land are discouraged by financial ruin or hopeless targeting by the one shoe fits all, micro-managing and bullying attitudes of our government.

As one of many Idaho farmers who fulfill a most basic need for the benefit of all Americans, I ask that you as keepers of the law not to allow the tyranny of bureaucracy to grow or to relegate us producers to serf and vassal status.

The Federal Government has lost its common sense, its compassion and the understanding of the basic American principles advocated by the framers of our Constitution. As long as private property and control of that property is in the hands of the people, the people will always govern. When the property is ultimately controlled by the government, the freedom and the liberty that we cherish will no longer exist.

In my written testimony I list many names of farmers and ranchers who are being impacted. The future of these Idaho families and the other 20,000 rest in your hands.

Thank you, Chairman Doolittle, members of the Subcommittee and especially you, Helen Chenoweth.

[The statement of Mr. Takasugi may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Ms. Chenoweth is recognized.

Ms. CHENOWETH. Mr. Chairman, I would like to take just one moment to recognize some people in the audience if it is all right with you.

I would like to recognize former Senator Daryl McRoberts, who is here on behalf of Senator Kempthorne who is at this moment in Bosnia. The President did state today that we may have reached peace in Bosnia and with Senator Kempthorne's position as one of the leaders of the Senate Armed Forces Committee, we are very proud of the Senator, but very pleased that he at this busy time for him, that you would be here, Daryl. Thank you so much.

I saw Lynn Tomanoga back there from the Idaho Water Users Association. We will hear from Representative Dan Mader and my Senator, Dave Little, is here. He is no longer Senator, but he and I went through a lot of political wars together and he will always be Senator to me.

Thank you very much, Mr. Chairman.

Scott Campbell, your testimony was riveting and very interesting. No, Richard Pombo, you cannot take him back to Washington.

Mr. POMBO. How did you know that is what I was thinking?

Ms. CHENOWETH. We need him in Idaho. But Scott, I wanted to ask you to help me understand the contractual relationship between the Bureau of Reclamation and the irrigators. Actually what I am getting at is what was represented in Ms. Purdy's testimony was that there was a threat to the delivery of water and her contract, she and her husband's contract. Is this what the Congress envisioned when they passed the Bureau of Reclamation laws that allowed for the construction of these projects and the entering into of contracts with irrigators and irrigation districts?

Mr. SCOTT CAMPBELL. Congressman Chenoweth—Mr. Chairman, Congressman Chenoweth, the simple answer is no, clearly not. The letter which Ms. Purdy referred to was received by a number of my clients as well, it was signed by John Keys, basically a not-so-veiled threat by the Federal Government, John Keys acting as its agent, concerning Lucky Peak Reservoir which is the first reservoir upstream on the Boise River. If you fly out today, you may fly over it. That reservoir was constructed by the Corps of Engineers as a flood control facility; however, the determination was made in the project evaluation studies to Congress that to operate the reservoir effectively for flood control, you should also use the upstream reservoirs, Arrow Rock and Anderson Ranch, which were built exclusively for irrigation.

To encourage the farmers and ranchers of the Boise Valley to enter into contracts and allow the joint operation of all these reservoirs, the Federal Government promised to make the water from Lucky Peak, the stored water, available for irrigation. They also promised that if the combined operation of the reservoirs ever reduced the amount of water that they would otherwise have in Arrow Rock or Anderson Ranch, that water would be made available in Lucky Peak to make up that difference because they were changing the operation. Since that time, except in 1977 when we had a severe drought, the Bureau of Reclamation has never made that water available, or if so, only rarely, for irrigation purposes and in fact has now changed the nature of use without protest because it was back in 1985 when people trusted the Bureau, they changed the nature of use of 150,000 to 160,000 acre feet of that water in Lucky Peak. So now there is no space that is not commit-

ted for or used. It is all either irrigation use or now environmental use. So they cannot honor their contracts with the irrigators.

Those water service contracts that were purchased by the irrigators for irrigation storage in Lucky Peak expire after the year 2000. The Bureau of Reclamation has put all the irrigators on notice that if they do not follow the water conservation regulations, which the Bureau is trying to enact, if they do not make the water available for salmon flow augmentation to protect the fish, that those contracts are not going to be renewed. I mean, pure and simple, they are changing the rules, they are violating the, in my judgment, sacred promise they made some 40 years ago, and they are basically telling the farmers and ranchers you do not matter, we do not care about you, even though Congress has never authorized the Bureau to take these actions. And I think it is a travesty and frankly I am ashamed of our Federal Government, that it is doing such a thing.

Ms. CHENOWETH. I had just one more question, Mr. Chairman.

Ms. Wilson, I wanted to ask you, you stated in your testimony that you signed the stipulation. Do you hold a water right or do you belong to an irrigation district?

Ms. WILSON. No, Idaho Rivers United had intervened in the proceeding as an interested party.

Ms. CHENOWETH. OK. Thank you, Mr. Chairman.

Mr. DOOLITTLE. OK. Mr. Pombo is recognized.

Mr. POMBO. Thank you, Mr. Chairman. I am just going to make a brief statement and I will yield the balance of my time to Congresswoman Chenoweth.

Ms. Purdy, your statement was I think very important and I think that all I can say at this point—and I will say it to you and the rest of the members of this panel—is we realize what has happened, we understand what is going on in the west, and this is a fight, not about water, it is a fight about a lot of different things. It is a fight about lifestyles, it is a fight about our ability to continue with the culture that we have in the west. But one of the things that is so important to understand in this whole debate is that for too long we sat back and watched the Federal Government do things, and we did not get together and fight. We did not as a group get together and fight for our individual rights, for our civil rights. And it does not matter if it is farmers and ranchers, if it is the Indian tribes, whoever it is, when someone is trying to take away the individual rights, the constitutional rights that are guaranteed to all of us, we should all fight for those rights. And it is unfortunate we got to the point now where we are in danger of losing a big part of our culture and a big part of the west. And we do have to fight together.

Times are going to change. Things are changing. It is just that we cannot change everything in ten months that took 40 years to get here.

I yield my time to Congresswoman Chenoweth.

Ms. CHENOWETH. Thank you, Mr. Pombo, Mr. Chairman.

Thank you, Viki, for the courage that you have in speaking out. I appreciate you very much.

Steve, thank you for being here. You are a beneficial use claimant under state law.

Mr. STEVE CAMPBELL. Yes.

Ms. CHENOWETH. And if the water you use is appurtenant to the land and therefore a property right as upheld by the Supreme Court, then would not these claims against your water be a taking by which you should be reimbursed?

Mr. STEVE CAMPBELL. Mr. Doolittle, Ms. Chenoweth, while I am not a lawyer, my understanding is that these are a right, they are like a property right. And if they were taken away, that would have a very adverse effect on what we do for a living.

Ms. CHENOWETH. That would be a taking of your property, would it not?

Mr. STEVE CAMPBELL. I would term it that way, yes.

Ms. CHENOWETH. Ms. Wilson, I wanted to give you an opportunity to explain your statement, this gobbledygook about water rights. What did you mean by that?

Ms. WILSON. Mr. Chairman, Ms. Chenoweth, I was summarizing about four paragraphs of my comments there. You could see that as a fast forward through my written materials. I have been operating at the local level, working to solve problems regarding instream flow concerns and fish and wildlife. I have been working at the state level in the Idaho legislature as an observer and often commenting to my Federal agencies. What I have discovered is that the law changes whenever a water right holder is inconvenienced by a portion of the law. I have seen it with Mr. Campbell and his colleagues in the water bar, they are able to contort the law and change it to their needs, so that at the bottom, the basic level here is that fish and wildlife did not fill out the forms and they do not get any water. And I do not think that is fair, I do not think the law should change. I think first in time, first in right is a good concept. I think most of western water law concepts are good, but the fish were here first, guys. We have got to face that.

Ms. CHENOWETH. How many—we have been involved in this program for about six or seven years with flow augmentation. How many salmon made their way back to Redfish Lake this year?

Ms. WILSON. No sockeye salmon made it back this year. I am not here today to support the biological opinion, I have a 60 day notice of intent to sue the Bureau, the Army Corps and BPA regarding the biological opinion for this year, and I am not here to say that flow augmentation is the best solution to the salmon problem, but right now the Federal Government said that is what they were going to do this year, and we would like them to at least hold up that part of the bargain.

Ms. CHENOWETH. Thank you. I do think that your testimony dealt with drawdowns, which would be flow augmentation, and so that is what prompted my question.

You did mention that we ought to be able to ship grain by rail. And I think that it costs about 18 cents to ship a bushel of grain by barge and about 36 cents by rail and about 78 cents by truck. So there is a big economic factor there that makes a difference in how we eat and the price of food.

Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you. Mr. Cremeans is recognized.

Mr. CREMEANS. Thank you, Mr. Chairman.

You know, Mr. Campbell, I was struck by your testimony, especially the line that alluded to your great grandfather and his two brothers who homesteaded three ranches. I wonder how many government bureaucrats were there to help your great grandfather and his two brothers carve that ranch out of the wilderness of Idaho.

I think both you and Ms. Purdy deserve a great deal of tribute for coming here today to testify because you truly represent the grassroots level of ranching and a great deal of economy as it relates to the state of Idaho. America truly is in the midst of a new civil war, a war that threatens to undercut the civil basis of our society and the weapons are not guns and they are not bayonets, but they are truly trial lawyers. And nowhere, nowhere, is that being more fiercely fought than on Capitol Hill.

Mr. Chairman, I yield back the balance of my time.

Mr. DOOLITTLE. Thank you. Mr. Cooley is recognized.

Mr. COOLEY. Thank you, Mr. Chairman.

Scott Campbell, can I ask you something? Scott—as an attorney and as one who has been involved with water laws as a state senator in the state of Oregon and sort of came out of retirement because I had the same problem that not everybody at that table has but most of you have had because I am a cow/calf operator and also raise alfalfa over in the Alfalfa, Oregon area—do you really believe that the Bureau under their present set of rules and regulations that they have, that they can actually shift water from agriculture use to others, under their present statutes that they have adopted?

Mr. SCOTT CAMPBELL. Mr. Chairman, Representative Cooley, based upon my review and knowledge and understanding of the Bureau's statutory authority and regulatory authority, I would say no. I would say in my judgment they do not have the authority. However, like anything else in the Federal Government, until someone wants to take them on and fight through the judicial system at great cost because the reference by Karl Dreher to the Bruneau snail situation, I was the lead attorney on the Bruneau snail litigation that resulted in the delisting by U.S. District Judge Harold Ryan, now deceased, it is very costly. The Ninth Circuit overturned the decision in part and now the process is starting again. It is very costly. But no, I would say they do not have that authority, but until somebody calls them to the carpet, challenges them, goes through the process, they will do what they want to do if the people at the top; i.e., the administration, says do this. My memo from Dan Beard illustrates that point to a T.

Mr. COOLEY. Well, I know Mr. Beard very intimately and I hope that I was a contributing factor in getting him to resign because we used to call him in every week and chew him out.

Mr. SCOTT CAMPBELL. Congratulations.

[Laughter.]

Mr. COOLEY. And he told me one time he did not need this any more from me and just after that he resigned. So I hope that I contributed to that function, and maybe we will do that to the next one as well as keep doing it as long as we can.

But anyway, I am not going to take any more time, but I would hope that I can contact you. I would like to know, in your opinion, how the Bureau—what statutes they are using in order to pursue

their goals as we are now, so we can take a look at it. I think that this Committee and other people in the Congress are committed to doing something about this. We just have to find specifics so we can do something about it.

The next question I would like to ask for the record is, Ms. Wilson, listening to you and looking over your testimony as we did here, I came to some kind of a conclusion here and I want to have some kind of an answer. Yes or no is very easy. Does your group—and remember I am going to ask you another question, and I want to remind you you are under oath—does your group really advocate removal of the dams on the Snake and Columbia River?

Ms. WILSON. Mr. Chairman, Mr. Cooley, my Board has not taken a position in favor of removing the dams. I believe the Nez Perce Tribe has put that——

Mr. COOLEY. Oh, no, I do not want to know that, I want to know your opinion.

Ms. WILSON. I was going to continue my answer by saying it is pending before my Board at this time.

Mr. COOLEY. Second question, and as I said before, remember you are under oath, how are you financed, where does your money come from?

Ms. WILSON. Mr. Chairman and Mr. Cooley, we are supported entirely by individual contributions and private foundations.

Mr. COOLEY. OK, do you file a 503?

Ms. WILSON. We are a recognized 501(c)(3) organization under the Internal Revenue Code. We file a Form 990 every year which is available through the IRS or we will send you our full audited financial statements if you would like?

Mr. COOLEY. Would you please make that available to this Committee? I would like to know the charitable organizations that contribute to your funding. You will do that?

Ms. WILSON. Most certainly.

Mr. COOLEY. Thank you very much.

And Pat, I want to say to you, I read your statement and I have to tell you that I am—it makes me feel very proud to see people come out and make statements I think that are very representative of the people of the west. And when you say "When fish are placed at a higher priority than people, something is wrong." You are right. When you start sacrificing people for fish, there is something wrong. I want to tell you that your figures on conservative estimates of $400,000 to reintroduce salmon and $200,000 for each wolf are probably under the real cost. We had Mr. Keys tell us yesterday that in his estimation, for the last seven years—I said that being on the Columbia Gorge Task Force for the Oregon State Senate for two years, that we had spent two billion dollars on fish mitigation. He made a statement that we are probably spending a billion dollars a year because of all the other expenditures that were not being counted. And we are not doing anything. And we have been doing this for seven years. We are not accomplishing anything and we are still doing, I think, knee-jerk science to try to bring back something that we may not be able to bring back. And at some point, as Secretary Babbitt said, the American public deserves an accountability for their investment. And I think we need to look at that aspect. Thank you.

Mr. DOOLITTLE. Thank you.

I would like to thank the members of this panel for their testimony. We will perhaps be asking for further questions to be answered and we would ask you to respond and we will hold the record open until those responses come. And with that, we will excuse panel number two.

I would like to call up now panel number three. We are running very close to the wire here. Panel number three is composed of Dan Mader, Lionel Boyer, Laird Lucas and Jack Barraclough. If the witnesses would step forward and if we are all here, raise your right hand and we will administer the oath.

[Witnesses sworn.]

Mr. DOOLITTLE. Let the record show that all responded in the affirmative.

We have with us the Honorable Dan Mader, who is a member of the Idaho State House of Representatives. We will ask Mr. Mader to begin.

STATEMENT OF THE HONORABLE DANIEL K. MADER, IDAHO STATE REPRESENTATIVE

Mr. MADER. Mr. Chairman Doolittle, members of the Committee and Congresswoman Chenoweth, we thank you very much for the opportunity to be able to give you some input today on a proposal being considered that affects all of us in the northwest a great deal. I would like to address the subject of reservoir drawdowns.

I am a representative from Lewiston, Idaho, which is the point of slack water. It was a community very directly affected.

Three years ago Federal Government agencies devised a plan to do something about the decline in the salmon runs that return to Idaho. A test drawdown was designed to collect the information necessary to implement future drawdowns of the reservoirs on the Snake River in northern Idaho and eastern Washington. That test drawdown took place in the spring of 1992. The gates on Lower Granite Dam were opened and the reservoir was drained.

This strategy of a drawdown was prescribed on the theory that without enough flow in the reservoir the smelts lose their bearings, swim sideways, backwards and eventually die. This theory is questionable at very best. Recent studies indicate that over 90 percent—in the high 90 percent—of the smelts that come to the slack water at Lewiston survive and make it to lower Granite Dam. It was carried out and is on the table today for future consideration with no information or scientific data that it will do any good.

To the contrary, a drawdown cuts off one of the only chances that the smelts have of safely arriving at the ocean. The Army Corps of Engineers has been transporting by barge large percentages of the smelts that arrive at the dams. They are collected, put in barges to avoid all the potential dangers they face on the river such as spillways, turbines, predators, and are safely transported below the last dam to finish their journey to the ocean. When a drawdown is done, the bypass system at the dams becomes inoperable and the fish are forced to swim either through turbines, over spillways and then traverse more reservoirs full of predators, seven more dams and seven more spillways. When you compare the number of fish that return from those that have been barged versus

those that have had to swim the entire way, on average you will get back two and a half times more fish from those that have been barged.

I testified at a hearing the Corps of Engineers conducted here in Boise two years ago on whether they should continue their transportation program. Quite a number—I was pleasantly surprised—of scientists and biologists came to that hearing on their own time to testify that the barging transportation program should continue for the benefit of the fish—a program that we lose when a drawdown is conducted.

The taxpayers of this country have paid hundreds of millions of dollars to put together an infrastructure on our waterways that bring us many benefits and now we find ourselves with a proposal that will nullify those benefits for a large portion of the year and cause untold economic damage in the process. That brings me to a second focus, which was the damage done by the test drawdown.

That test drawdown was done for a period of 30 days and during that period there was damage sustained. The roads along the reservoir are supported by the pressure of the water. When the reservoir was drained, those roads lost that support and they settled and broke and were damaged. Whitman County, in Mr. Hastings' district, filed a claim in excess of $200,000 to fix that road. I do believe that was given to them. The resident warm water fish populations were decimated by the drawdown because their food source along the banks was destroyed. In addition, Lewiston is a center for boat manufacturing. The drawdown put a halt to boat sales and other supporting equipment and services. The reservoir was gone, the boat launches were largely inoperable and there was no enticement for the recreation that we have had in the Lewiston/Clarkston valley. One marina operator in Clarkston, Washington attributes his bankruptcy to the drawdown experiment. I do not believe he has ever been compensated for the loss of revenue that put him out of business.

Finally, Lewiston is the collection point for grain and other products that are moving down river and into export channels. Grain comes from North and South Dakota, Montana, Idaho, Washington, Oregon and now quite a bit of western Canada. If we lose our river system for this shipping, it will add millions, if not hundreds of millions of dollars to the cost of agriculture and business in the inland northwest. It may increase the cost of shipping to the point that a company like Potlatch, which is our major employer in Lewiston, is no longer competitive in Asia with their pulp and paper wood products. The added cost of shipping grain from Lewiston to the coast is estimated to be 10 to 20 cents per bushel at minimum, and that would add $5.00 to $20.00 to the cost of producing and selling every single acre of grain.

Some people have argued that the river will only be shut down for three to four months and therefore we could plan ahead and sell around this shutdown. But that is not possible. The grain and transportation companies operate on very slim margins and they just would not be viable with six or eight months of operations. And furthermore, you cannot move grain that has not been sold and you are not going to receive a good bid for grain that cannot be moved. If the river were closed for an extended period each year,

we would have to develop a second way of moving that grain, and the question is can two separate independent operations both be operational and profitable, and the answer is no. The alternative system would operate and would probably eventually replace all of the infrastructure on that river system. Shutting down that river is the equivalent of shutting down the interstate highway system for a region of the country to help some rabbit specie migrate more effectively.

These are a few of the problems that we face in Northern Idaho from Federal Government proposals to deal with the Endangered Species Act.

Our experiences in Northern Idaho are the reason that people like myself and others are asking that we reorganize our government with less power in Washington and return these decisions to the people back home in the states. It was never intended by the creators of this government that a bunch of Federal bureaucrats in Washington, D.C., would control large decisions over the sovereign governments of the states. It was not intended because they had experienced that type of distant control over their colonial governments and they experienced the futility of trying to bring some sense of understanding to those decision makers in England. It didn't work then and it won't work now. It's time to return the intended powers back to the states where these decisions will be made more in line with the will of those that will have to live with the consequences.

I thank you for this opportunity to give you some perspective on that drawdown experiment.

Mr. DOOLITTLE. Thank you, sir. Mr. Lionel Boyer, Fisheries Policy Representative for the Shoshone-Bannock Tribes is recognized.

STATEMENT OF LIONEL BOYER, FISHERIES POLICY REPRESENTATIVE, SHOSHONE-BANNOCK TRIBES

Mr. BOYER. Thank you, Mr. Chairman. I do have with me from my technical staff, Mr. Keith Kutchen. Good afternoon.

My name is Lionel Boyer and welcome to my land, the land of my ancestors, the land of my people.

I was asked to appear before the Subcommittee today to present and discuss the Tribes' views on drawdowns and flow augmentation. I will explain in a moment how the solution for the endangered Snake River salmon also solves the water availability problems in Dworshak Reservoir and the other large storage projects, including the upper Snake River.

However, in order to address our specific views on augmentation and drawdown, it is important to recognize the overall tribal perspective on the natural systems. The dominant society defines uses of the water as beneficial only so long as the uses are economically successful. Yet, protection of the natural resource, this earth, our home, is not thought of as a beneficial use. It is rare when protection of the natural resource is thought of as even being economically feasible. How can we call the destruction of our mother earth, our home, and her inhabitants which includes ourselves, beneficial? The extinctions that we have seen and are forthcoming, are these signals that we are next?

Uses of the river as a commodity should be managed in accordance to the needs of the fish and wildlife. This is different from the flawed manifest destiny management philosophy of the dominant society. Presently, management of fish and wildlife and their habitats which, do not forget, include our homes, is in accordance to other uses of the river, uses that require removing the water from the river.

I am sure that this Subcommittee heard the concerns regarding waterspreading from the Umatilla Tribes at yesterday's hearings. The river, the ribbon of life and the river's inhabitants are disappearing. This is unacceptable to the Shoshone-Bannock Tribes.

The policy of the Shoshone-Bannock Tribes is to pursue and promote the restoration of the Snake River system to a natural condition, to manage other uses of the river in accordance to the needs of the resource. Thus the Tribes fully support and promote the permanent restoration of the natural river level in the lower Snake River. Building bypass channels around Lower Granite, Little Goose, Lower Monumental and Ice Harbor Dams, mothballing instead of damaging the facilities, provides the natural river levels in the lower Snake River mainstem. This is certainly the most direct solution to the anadromous migration problem.

Salmon migration requirements in the lower Snake River are reduced from 140,000 cubic feet per second to only 10,000 cubic feet per second. The water that is presently forced out of the large storage reservoirs for salmon flows is presently inadequate for salmon migration needs. This includes the water released from Dworshak and the upper Snake River. These flows devastate reservoir ecosystems and impacts the economies of the areas that these flows come from.

The region's fish managers agree that the restoration of the natural river levels in the lower Snake River not only solves the salmon passage and water availability problems of the Snake system, but also provides optimum conditions for resident fish and restoration in the storage reservoirs. The needs of the storage projects and the mainstem salmon requirements are both met with this solution. This option provides the benefits that are needed.

The economic benefits are great. Hundreds of millions of dollars continue to be spent yearly on projects involving more curtains, screens, bypasses, barges and studies. This slowly assures the demise of the fish, our brothers. Instead, use these funds to implement the solution.

The four lower Snake River dams are not an efficient source of electrical power, they produce only 1000 megawatts, which is 4.6 percent of the region's production. This power can easily be replaced and conserved.

Toll-free navigation to the lower Snake provides no net economic benefit and is a heavy taxpayer and ratepayer subsidy. The four lower Snake River dams were authorized by Congress to provide only a small portion of the benefits to navigation. Now 85 percent of the benefits are given to navigation against Congressional intent and at a tremendous cost.

The amount of lands irrigated by the lower Snake River is minimal, about 30,000 acres. This agriculture provides no net economic benefit. Restoring the natural river level yields an annual economic

benefit of at least $158 million according to the recent economic analysis by Phil Lansing. Other economic analyses also support these conclusions.

The permanent restoration of the natural river level in the Snake River provides a solution to the recovery of the endangered salmon, it eliminates the need for salmon flow augmentation from the upper Snake River, it leaves the large storage reservoirs at stable and full levels, it provides a significant economic benefit including increased employment while relieving the existing tax and ratepayer burden for the industrial and power subsidies. It would provide healthy local economies.

This is what we have to do to assure something for our great grandchildren's grandchildren.

Thank you.

[The statement of Mr. Boyer may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Mr. Laird Lucas is recognized. Mr. Lucas is Director of the Idaho office of the Land and Water Fund of the Rockies.

STATEMENT OF LAIRD LUCAS, LAND AND WATER FUND OF THE ROCKIES

Mr. LUCAS. Thank you, Mr. Chairman. My name is Laird Lucas, I live here in Boise with my wife and two children. I grew up in Oklahoma, my wife is from east Texas. These are both flat, humid places that can get as much rain in a couple of spring thundershowers as Boise does in a year. We are proud of our roots, but we are thrilled to live in this great state that has mountains and high desert and canyons and a lot of other things that the states we grew up in do not have.

I am an attorney with the Land and Water Fund of the Rockies. We are a non-profit organization that provides legal advice and representation to state and local groups, conservation groups in the Rocky Mountain region. I run the LAW Fund's field offices in Boise and I represent conservation groups, Idaho groups, on resource and environmental issues, primarily water issues.

Indeed, I would say that the focus of my job is to help give Idaho groups a larger say in how Idaho's water is managed. Traditionally it has been solely water right holders who have determined how Idaho's water is used, without regard to other values, to the point that many rivers and streams in this state are completely dried up by late summer with disastrous consequences for fish, wildlife and the people who recreate in and around them.

In a state like Idaho, where recreation is increasingly important, a growing segment of Idaho's populations feels that these harms to our resource treasures are no longer acceptable. Increasingly, Idahoans demand that greater attention be paid to the value of water for non-consumptive uses such as fishing, recreation or maintaining wildlife habitat. Increasingly, they demand that their voices and concerns be heard by those who are making the decisions that affect them.

There is no question that Idahoans want to maintain control over how Idaho's water is used and allocated and that, I understand, is the key issue this Subcommittee is concerned with. But you have to understand the role of the Federal Government in the historical

development of Idaho and Idaho's water as well. Because of that historical role and because of the nature of Idaho water law, the Federal Government will naturally play an important part in Idaho water law.

Mr. Chairman, I have submitted written testimony and I have too much in there to recount now, so I would ask that my written testimony be included in the record and I would like, since we are running out of time, just to emphasize just a couple of points.

One is that Idaho water law, as Representative Chenoweth noted in the beginning, holds that the state of Idaho owns the water. A water right is a right to use water. And under Idaho water law, like other prior appropriation doctrine states, that right is carefully controlled by the state. You have got to use it or you lose it, you cannot waste it. You have got to use it in a particular place at a particular time from a particular source. And there are a lot of doctrines written into Idaho water law that limit rights. And the water rights can be lost under our Idaho law.

Water law changes as society changes, and in my written testimony I have talked about a couple of U.S. Supreme Court cases and Idaho Supreme Court cases that recognize that. The Idaho Supreme Court in 1974 recognized for the first time that leaving water instream, a water for instream right purposes, was a beneficial use under Idaho law. That is similar to what the Bureau of Reclamation is trying to do now with its salmon flow proposals, is use the water instream for other beneficial uses. That is consistent with Idaho law.

As Idaho society changes, water law changes. The Idaho Supreme Court about three weeks ago upheld the notion that the public trust doctrine takes precedent even over water rights. The public trust doctrine embraces the notion that society's importance, the values that are important to society, should be reflected in how water is used.

Water is a property right. A water right is a property right and it should not be taken away without a great deal of concern for the people that are impacted. But the state does retain the ability to regulate how water is used in this state, and it does recognize increasingly that there are different kinds of uses and that there are different values associated with water use in the state, including protection of fish and wildlife and so forth.

Now the Federal Government, as a matter of historical fact, is the largest landowner in the state of Idaho. And we have heard today from people talking about how important water rights are to landowners in this state. That is no less true for the Federal Government than for anybody else. And I am not here to defend the Federal Government's role in the Snake River Basin adjudication or anywhere else. I often find myself suing the Federal Government and opposed to them. But I do think it is important to recognize that as the largest landowner in the state, it too has to protect its water rights. We are talking about land that essentially starts from the mountains you see right up here and goes all the way to Canada. It is filled with rivers and streams and lakes that are the public's property and they need the water to protect the uses of those lands, whether it is a national recreation area like the Sawtooth Mountains, or Hells Canyon, whether it is wilderness area,

whether it is multiple use lands for timber and grazing. Those are public lands and the public is entitled to protect its water rights.

We have seen the Federal Government try to assert those rights in the Snake River Basin adjudication, which it has to do or it may lose them. It spent millions of dollars quantifying what its rights are, just as other landowners in Idaho have done the same thing. It went all the way to the U.S. Supreme Court fighting whether it had to pay to file its claims. I think the Federal Government should have had to pay, but the Supreme Court said it did not.

Last week, the Forest Service unilaterally, without any settlement, without any public notice, without any EIS, withdrew over 98 percent of its Forest Service claims. It simply dropped them. It is giving up the public's water right, a valuable property right, without any kind of compensation or offsetting bargain whatsoever. This is a giveaway of Federal property and it needs to be looked at by this Committee. If you were a bank holding property in trust for some beneficiary and you did not assert your water rights, the water rights for those properties, or if you just gave them up like the Federal Government has done, you would be sued in a minute and you would lose, the court would rule against you. That is what the Federal Government did last week and I would ask this Subcommittee to investigate the giving away of Federal water rights on Federal land.

Thank you.

[The statement of Mr. Lucas may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Our next witness is Jack Barraclough, a member of the Idaho House of Representatives. Jack, welcome.

STATEMENT OF THE HONORABLE JACK BARRACLOUGH, IDAHO STATE REPRESENTATIVE

Mr. BARRACLOUGH. Thank you, Mr. Chairman. In addition to being a Representative, I am a certified professional hydrologist. I live in Idaho Falls, Idaho.

Southern Idaho is a semi-arid desert and the development of our water resources has made our civilization possible. The development was a cooperative effort of individuals, canal companies, dam builders, engineers and local and state government officials. The cooperative efforts of many people allowed our water to be harnessed for man's use.

Way back in 1948, I collected spring samples and measured the flow of springs from Milner to Bliss. I was taken by the purity of the numerous springs gushing out of the sides of a deep basalt canyon cut by the Snake River. The water was crystal clear and at a constant temperature of 57 degrees Fahrenheit. Where did this water come from? How much was in the reservoir? When will it run out? What purifies it? How is the spring flow related to the Snake River? I decided to study the aquifer to understand how the system works. I have made this my life's study. Much of this time, I worked for the U.S. Geological Survey. Imagine a Federal agency that evaluates our nation's resources and does not regulate any part of our lives.

So this is the background that I have as a Federal scientist, to look at Idaho's water and to try to understand what the principles

and processes were so that we could utilize it and work in cooperation, not against, the people in Idaho.

The Snake River Plain aquifer covers about 10,000 square miles and contains about 400 million acre feet of water. It is 200 miles long and 50 miles wide. Eleven of the nation's 65 largest springs are located at the discharge point of the aquifer near Twins Falls. The springs are a treasure to Idaho and provide water for 70 percent of the commercial rainbow trout production in the United States.

Back in 1908, the springs from near Twin Falls discharged three million acre feet of water. By 1950, the discharge had increased to five million acre feet of water. This increase was a result of recharge from applied irrigation waters, canal leakage and dam leakage, and really man's use had almost doubled the flow of the springs. Today, the spring discharge is about 3.7 million acre feet per year. The decrease is due to conversion from flood to sprinkler irrigation, less water in the canals, groundwater pumping from wells and drought conditions. The water level in the Snake River Plain aquifer has declined more than 20 feet in some areas. Spring flows have declined, the yield of wells has decreased, and because of this, numerous lawsuits—or several lawsuits have been filed and fingers have been pointed, kind of them against us attitude. What can be done to prevent massive lawsuits in the future, to prevent shutting off pumping wells, or take large plots of irrigated land out of production?

In 1993, I was co-chairman of a legislative subcommittee on artificial recharge of the Snake River Plain aquifer, a plan to increase spring flows and raise the water levels. This set the stage for a recharge project in 1994 that recharged about 24,000 acre feet, and a much larger project this year. This year, the Idaho legislature funded one million dollars to purchase 300,000 acre feet of water for recharge. We have only accomplished about 140,000 acre feet of water for recharge this year. But when you put this in perspective, the decline from 1950 to 1994 has been about 35,000 acre feet per year, so this is more than the decline.

This is the most positive management tool for the aquifer that we have at present. However, Federal officials of the Bureau of Reclamation have not supported this project. It is interesting that the Bureau of Reclamation, in cooperation with the USGS, published a thick report in 1962 on the recharge of the Snake River Plain aquifer. This is the report, and this is the difference we find in Federal agencies. Back in 1962, this was to help the people, not work against them. And it is the same agency that wanted to help us back then and wanted to utilize the water for man's use, is now acting to take it away. Recharge is like putting water in the bank for later use. It benefits downstream users and stores the water for future use.

Another example is the Snake River Basin adjudication that has been underway about ten years. There are about 170,000 water rights filed. Many of the claims are by the Federal Government. In fact, they are exempt from paying filing fees, and that has caused a great financial burden on the state of Idaho. They are the only claimants in the lawsuit and the adjudication that do not have to pay their way. Just last Friday, the U.S. Forest Service withdrew

3704 claims, and this was after the Idaho Department of Water Resources and Snake River Water Court had spent thousands of dollars processing the claims. What a waste of time, money and effort.

The desire of agencies of the Federal Government to appropriate and send water down the Snake River to save salmon has been well established. We all want to save salmon and we want Idaho to do its share. I object to water transfers from Idaho that are not based on sound science. The feds should develop a plan that should save the salmon and then let us work together to decide how much water is needed and where the best places are to obtain it. Saving the salmon will not be accomplished by a simple drawdown plan or flow augmentation.

Anyway, in summary, we knew how to cooperate in the past, let us cooperate in the future.

Thank you very much for this opportunity.

Mr. DOOLITTLE. Thank you, sir. Ms. Chenoweth is recognized.

Ms. CHENOWETH. Mr. Lucas, I wanted to ask you, did you state in your testimony that the Idaho Constitution states that water must be managed for the highest social value?

Mr. LUCAS. I do not think it says it that way. It has terms of public use in the Idaho Constitution. The law of prior appropriation and beneficial use, the Idaho Supreme Court has had numerous decisions about that, concepts like maximum utility, reasonableness, beneficial use have kind of infused the law of the prior appropriation doctrine here in Idaho.

Ms. CHENOWETH. I think our beneficial uses are clearly stated in the Idaho Constitution.

Mr. LUCAS. It states some of them.

Ms. CHENOWETH. Well social value is not part of the beneficial uses that have been stated. Is there another place in the Constitution or any place where the Federal Government is entrusted with the management of state waters?

Mr. LUCAS. Congressman Chenoweth, I cannot tell you a place that that has happened.

Ms. CHENOWETH. OK. You testified to that and I just wondered about it.

And you referred, by reference, not to the name, but by reference to the substance of the decision to the *Malad Springs* case that was decided in 1978. Now there is a clear distinction there and that is that this was a case that was brought within the state of Idaho, not by the Federal Government, but by the state itself. And I think that the decision in the *Malad Springs* case said that you do not have to have a point of diversion for a beneficial use, but you must go through the proper appropriations process and abide by state law. And so I think that the *Malad Springs* case is consistent with the Endangered Species Act which also says that you must abide by state law and purchase the water.

How long have you lived here in Idaho?

Mr. LUCAS. I am in my third year here.

Ms. CHENOWETH. Well, I hope you enjoy our state.

Mr. LUCAS. We love the state.

Ms. CHENOWETH. And I did want the Committee to know that Mr. Boyer is representing the tribe that Sacajawea was from and we are very proud of that part of our heritage.

And then I just want to make a short statement to Representatives Barraclough and Mader and then I will yield the balance of my time.

Representative Barraclough, I did not see you sitting behind Jack Streeter's head over there. But I am so glad you came all the way from Idaho Falls, and I really respect your background and experience in geology and hydrology. But I do want to say that both of you have come so far and I have looked to both of you and your leadership in these issues and other issues. And I just want to state to you and for the record that it is our concern that we back away from this issue unless the Federal Government wrongfully interferes in your responsibility, which is to have the final say and make the final statement as to how water will be utilized. And we respect that, we honor it, and I hope it will always be. And I thank the people of Idaho for electing people like the two of you. Thank you very much for being here.

Mr. DOOLITTLE. Thank you. Mr. Pombo is recognized.

Mr. POMBO. Thank you, Mr. Chairman.

Mr. Boyer, do you believe that the solution for the problems that exist here that relate to water, whether it be endangered species problems, fish and wildlife problems or the appropriation of water, do you believe that those solutions can be found locally?

Mr. BOYER. I believe those solutions can be discussed locally and with the work of all that are involved in making those decisions, the solution can come about.

Mr. POMBO. And you obviously want to be part of that process.

Mr. BOYER. I am a part of that process.

Mr. POMBO. Thank you.

Mr. Barraclough, in your testimony, you talk about—and before I ask this question, have you written more on this? Have you over time written more on this entire problem of recharging the aquifer. In your previous position with USGS, did you ever prepare a report on this?

Mr. BARRACLOUGH. No, I have not, sir, I have worked on certain aspects of it and worked on recharge, designed recharge facilities on the Big Lost River, which would enhance the recharge from flood flows at the Big Lost River, but I have not prepared a report specifically on this.

Mr. POMBO. If you ever do, I would be interested in having a copy of it because this is very interesting. Coming from California, we have a lot of the same problems obviously.

But in your testimony, you talked about historic discharges from the aquifer, that they grew from three million to five million acre feet per year and then they fell again to 3.7 million when we became more efficient with our use of water. But then you go on to state that we are recharging that area. Why?

Mr. BARRACLOUGH. The biggest concern is declining water levels and declining spring flows, and because there are water rights, when your well or spring yield declines, then you want to look around to see who you can blame and who you can sue.

Mr. POMBO. But you are talking about, historically you said three million acre feet and we are presently at 3.7 million acre feet. So we are actually higher than what historically was there.

Mr. BARRACLOUGH. Yes. But the economy has been and the development has been based on the 1950 flows, and unfortunately most of the water level records for groundwater start in about 1948, 1949 or 1950. So the people see this declining trend from 1950 to now and get very alarmed and think we are running out. And so the recharge was a way to increase the spring flow. In fact, from the little recharge program we started last year, the spring flow actually came up for the first time in about nine years. Of course, part of that was drought. But the large recharge project this year has already started to restore the flow of the springs and restore some of the yield of the wells. And so that way, we will be able to prevent lawsuits and keep from trying to shut down people's wells, sir.

Mr. POMBO. How did it change? You know, we have talked a lot about discharge, we have talked a lot about flows through this system. How did going from three million to five million change the ecology, change the environment that was present in the river?

Mr. BARRACLOUGH. A hundred years ago, sir, the flood flows would leave the state in a matter of a few weeks. There were no impoundments to stop them and they would just essentially flow out and on to the Columbia through the Snake and other tributaries on to the Columbia.

Then when we started damming the rivers and storing the water and then applying it on the land, then it was a de facto—irrigation project with de facto recharge, if you will. And so it caused a great increase in spring flows. And then the rainbow trout industry, the amount of flow depends on how many trout they can raise.

Mr. POMBO. Are you saying that this increased flows at certain times of the year?

Mr. BARRACLOUGH. No, it was—it does change a little bit during the year, but it is almost a constant flow.

Mr. POMBO. In drought years without the dams and everything in place, what kind of flow would there be through the river system?

Mr. BARRACLOUGH. In Blackfoot, Idaho during August traditionally there had been about a month where the river was dry before the dams were built and water was applied for irrigation and there just was not enough water to furnish enough water for stream flow, minimum stream flow.

Mr. POMBO. So some of the streams and the small tributaries would dry up.

Mr. BARRACLOUGH. Yes, that is right, sir.

Mr. POMBO. What fish population—they did not have a fish population then if there was no water.

Mr. BARRACLOUGH. Well, the fish will migrate upstream or downstream if given enough time. If it ends abruptly, then of course there are large fish kills. No, the reservoir system has really added a lot of stability to the flow and the ability to manage the flow for multiple uses.

Mr. POMBO. So the current—I know you are not a biologist, but the current environment that exists really is an artificial environment for a number of reasons.

Mr. BARRACLOUGH. Yes, because of man's development.

Mr. POMBO. Thank you very much.

Mr. DOOLITTLE. Mr. Cremeans is recognized.

Mr. CREMEANS. Thank you, Mr. Chairman.

Mr. Lucas, reminding yourself of your prior oath, for what reason did you move to the state of Idaho?

Mr. LUCAS. Congressman, I was practicing law in a big urban area and I had a couple of young children that I did not want to raise in an urban area, and I wanted to be a public interest, environmental lawyer. The job here in Boise came available and it seemed like a great state so I took the job and moved here.

Mr. CREMEANS. Was it principally for material gain?

Mr. LUCAS. Oh, no, I took a huge pay cut.

Mr. CREMEANS. OK. What percentage of your clients are from within the state of Idaho, roughly?

Mr. LUCAS. Ninety nine percent. I think I represent one out-of-state group in this Bureau of Reclamation proceeding where there is a coalition of groups and I represent a national group as well as Idaho groups in that. I virtually only represent Idaho groups.

Mr. CREMEANS. Thank you, Mr. Chairman. I yield back my time.

Mr. DOOLITTLE. Thank you. Mr. Cooley is recognized.

Mr. COOLEY. Mr. Mader, looking over your testimony and seeing that you probably have a pretty good knowledge of problems with the area and the rivers, can you give me some idea of what kind of salmon runs we have on dammed rivers compared to non-dammed rivers at this present time?

Mr. MADER. Well, I am not an expert on the biology of fish, but one of the things, as a Representative for a district that is facing this issue, you are forced to come up to speed on it, and one of the things that seems to be out of context is that if you were not familiar with this whole situation, you would get the impression that the only salmon run that is in trouble is the one that is going up to Redfish Lake. And in fact, I believe that there are 250 runs that are in trouble and I am just trying to recollect off the top of my head here, somewhere in the neighborhood of 50 percent of those runs have no dams on them whatsoever. So when you put that whole problem in context, I think it changes the nature of the answer to a great degree.

Mr. COOLEY. Mr. Boyer, could you tell me how many members you represent, how many people belong to your Tribe?

Mr. BOYER. We have an enrollment, Mr. Chairman, Mr. Cooley, we have a tribal enrollment of a little better than 3900.

Mr. COOLEY. Thank you. I was interested in your comment on the third page, you said "The amount of land irrigated by the lower Snake River is minimal, about 30,000 acres, and provides no economic benefit." Are those 30,000 acres irrigated? I am just curious.

Mr. BOYER. I believe they are.

Mr. COOLEY. But they have no economic benefit to the state of Idaho?

Mr. BOYER. They are in Washington.

Mr. COOLEY. OK, in Washington, but they have no economic benefit. I find that a little bit strange, but apparently we are farming and not making any money on it.

Last question I wanted to ask you, on the first page you talked about promoting restoration of the Snake River system to its natu-

ral condition. Do you mean taking out the dams and letting it free flow, is that your——

Mr. BOYER. Yes, a natural river, a natural river condition. As I mentioned, mothballing the——

Mr. COOLEY. Not removal but just——

Mr. BOYER. Not removal, just mothballing them.

Mr. COOLEY. Well if we have those structures there, do they not prohibit the flow?

Mr. BOYER. If you go around the rivers, it would not restrict the flow.

Mr. COOLEY. So you are proposing a canal around the present dams that are in position, in order to let the water flow.

Mr. BOYER. Let the river be a river.

Mr. COOLEY. A little expensive.

Mr. Lucas, I will remind you you are under oath again because I think that you are an officer of the court—by the way, do you belong to the bar in the state of Idaho?

Mr. LUCAS. I do.

Mr. COOLEY. Good. What kind of corporation do you represent?

Mr. LUCAS. It is a 501(c)(3) non-profit corporation. I am employed by it, I do not represent it. We usually represent other clients.

Mr. COOLEY. Right. Is it incorporated in the state of Idaho?

Mr. LUCAS. It is a regional organization that is incorporated in Colorado and I believe we have foreign corporate status here in Idaho.

Mr. COOLEY. Would you make financial statements, et cetera, available to the Committee?

Mr. LUCAS. Sure.

Mr. COOLEY. Full detail.

Mr. LUCAS. I will be happy to provide you our audited financial——

Mr. COOLEY. I would like to see your foreign corporation papers as well.

Mr. LUCAS. OK.

Mr. COOLEY. Thank you.

One last thing, I cannot help but from flipping through your testimony, I see that you made a statement about we should comment the Bureau on all the good work they have done in their effort to help mitigate the salmon and promote environmental issues, et cetera. After listening to Ms. Purdy's testimony about how she has been treated by the Bureau, do you really think that that statement has the full support of all people in Idaho?

Mr. LUCAS. Obviously it does not. Mr. Congressman, it obviously does not have full support of everyone in Idaho. My point was it seems to me that the Bureau of Reclamation is trying to work through state water law in what it is doing. And it is trying to bring all the parties to the table.

Mr. COOLEY. You misunderstood my statement. I am not denying that the state, I mean the Bureau is not trying to work with state laws. I am just making reference to the tactics used in order to persuade people to comply with the Bureau's wishes. That is what I am really referring to.

Mr. LUCAS. Mr. Congressman, I do not have any personal knowledge of what tactics were used. In their dealings with me, there

was no pressure. We agreed to the stipulation, we were informed about it, we hope to participate in the settlement talks that go forward over the next year and hope we can find a resolution that everybody agrees to. It is a huge undertaking, there are a lot of people involved.

Mr. COOLEY. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you.

I think just by way of closing, I would just like to share a couple of thoughts that I have had visiting this great region, having been aware of its problems through various hearings we have held in Washington and here and other places. You certainly have one of the greatest river systems in North America, some of the best natural resources. Improving the fisheries is a worthy goal that I support when sound science is the basis of those efforts. I find myself, after the last two days of hearings, feeling a combination of disbelief and frustration. In pursuit of unproven theories regarding salmon restoration, billions of dollars are being spent at great taxpayer and consumer expense with little or nothing to show for it. I mean it is shocking, ladies and gentlemen. And what shocks me or surprises me, or whatever the emotion is, is that these powerful Federal agencies are not even questioned anymore because everybody is so used to being beaten down by them. You know, whether it is the Fish and Wildlife Service or NMFS, who we did not hear from today, or the Bureau of Reclamation or the EPA that was not here, the Corps of Engineers, all of these Federal entities with conflicting jurisdictions, overlapping jurisdictions, blinders on, each one going down its own path, wasting people's money and negatively impacting their property rights. It is just incredible, and each failure at some experiment is greeted by Federal authorities with an even more costly and economically burdensome proposal such as the one to drawdown the level of the river, the minimum pool at John Day, or the change in the nature of the use being filed by the Bureau of Reclamation.

Ladies and gentlemen, this nonsense has got to stop. I just make that observation to you as one member of the House of Representatives. I want to add as well, treaty obligations must be honored. I find the assertion of the claim, however, by the Nez Perce Tribe to the entire flow of the Snake River to be unbelievable. I find gill netting to be a practice which needs to be examined, to have its impact on the fisheries examined. And I am going to call for that examination on this Committee. I think we have got to take some testimony and find out what the effect is.

To the state of Idaho, I would say you are in the driver's seat, folks. Your citizens cannot afford the legal costs to fight this as individuals, you are the government, you are a sovereign state, stand up and assert your rights as a sovereign state to that water under the Constitution of the United States, and specifically the Tenth Amendment. I, for one, will back you, as a member of the Congress. Many others will back you. This Committee, I believe, will back you. But you are in the driver's seat. We will do our best to try and rein in this plethora of Federal agencies, whether through the use of the appropriations power by attaching riders restricting what it is they can do, whether through oversight hearings such as this one, whether through the actual use of the lawmaking power,

these are the tools available to us. But the use of these tools takes time. So to the state of Idaho, it appears to me from the testimony we have heard, you get to decide whether the Bureau of Reclamation gets to change its use. I would advise you to use that power in the wisest fashion that you can.

With that, I would like to thank our witnesses on this panel and on the other panels today. It has been an excellent hearing, very illuminating.

We would ask you on this panel, like the others, if you would please respond to any additional questions that we may have to address to you and we will keep the record open pending the receipt of those responses.

And I would like to again acknowledge and thank Ms. Chenoweth. She is a very staunch and effective proponent for your interests in the House of Representatives.

With that, this hearing is adjourned.

[Whereupon, at 2:44 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

Statement of Representative Helen Chenoweth
House Committee on Resources
Subcommittee on Water and Power Resources
Hearing on
"Federal Government Actions Affecting Idahoans' Water Rights"
Thursday, October 5, 1995
Boise, Idaho

I'm very pleased to welcome Chairman Doolittle and my subcommittee colleagues to Idaho -- a state brimming with pioneer spirit and determination. I appreciate the Governor's Governor taking time out of his busy schedule to accept my invitation to speak to us. I would like to thank the witnesses, many of whom travelled far in order to participate in this hearing to address issues surrounding a resource vital to the economic survival of this state -- water.

Oliver Holmes once said that "the life of the law is not logic, but experience." Nothing could better describe the development of laws regarding water in the west than that statement.

Throughout this century, for the purpose of instilling order, states have carefully constructed laws to regulate and preserve water to fulfill all of its multiple uses. As a result of these laws, once desertic lands have blossomed, wildlife has thrived in our reservoirs and rivers, and generations of people have had the opportunity to enjoy the diverse and rugged beauty of the west.

The rugged pioneers of the mid 1800's created a need for a solid blueprint to be established so that water would be fairly allocated for all of its numerous purposes. Water was gold to those early settlers, and to this day remains a resource that is revered above all others.

The need for a system of allocation led to the prior appropriation doctrine -- first in time, first in right -- which firmly established the method for allocation of water in the west. Because water became the vital factor in determining the value of farmland, it was actually determined to be "appurtenant" or connected in a proprietary way to the land it was used on.

Under the equal footing doctrine, Congress inherently gave the states the responsibility to determine the appropriation of their waters. The Idaho Constitution specifically declares that the state alone controls the allocation of appropriated water. Furthermore, it states that whatever waters are not appropriated, it owns -- and can only be used for a "beneficial purpose" specifically expressed by state law.

The Reclamation Act of 1902, gave the early westerners a means to harness the productive benefits of the water, to use it to develop thriving communities on lands that were previously inhospitable. More than that, the legislation was seen by its drafters as a tremendous achievement that would have benefits for all Americans. The report from the Committee on Irrigation of Lands which accompanied the Act contains a message from President Roosevelt that states:

"The reclamation and settlement of the arid lands will enrich every portion of our country, just as the settlement of the Ohio and Mississippi valleys brought prosperity to the Atlantic States. ...Our people as a whole will profit, for successful home making is but another name for the upbuilding of a nation."

The Reclamation Act also specifically recognized state sovereignty over water, stating:

"Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any state or territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws..."

In the critical decision "California vs. the United States," 438 U.S. 645 (1978), in which the Supreme Court reaffirmed the validity of the Reclamation Act of 1902, the Court also speculated on what would be the result if State laws controlling water were to be preempted by federal regulatory decisions:

"To take from the legislatures of the various states and territories, the control of (water) at the present time would be something less than suicidal...If the appropriation and use were not under the provisions of the State law, the utmost confusion would prevail."

I give this brief summary of the meticulous development of laws regarding water, and how vital they are to our survival, so that we can couch it in the terms of what we are seeing now.

While the Supreme Court has upheld the rights of states to control their waters, these rights are being chipped away at by federal actions that attempt to obtain water through negotiation, thereby ignoring a body of case law upholding state's rights.

What we are seeing is a new trend by government entities making decisions never expressly authorized by Congress about how we use our water. We are also seeing long established state processes being superseded by federal bureaucratic decisions. And we are seeing federal district judges ignore clear precedent set down by both statutory and common law in favor of non-binding federal policies, such as "biological opinions."

These type of actions have the potential to dislodge the delicate system now in place for controlling water. The disruption of that system will have a devastating impact upon the sovereignty of Idaho and the livelihoods of its citizens. Already, it is creating a sense of "confusion" and uncertainty that the Supreme Court warned about.

In order for individuals and companies to plan their investments each year, it is crucial to have some idea of what to expect in the orderly allocation of water. With the current trend of abandoning regular processes, and an unclear path of where this will lead to in the future, the ability for citizens who are attempting to make a living in our state to adequately know how to protect their investments is in serious jeopardy.

No part of Idaho is immune from the federal encroachment upon our water rights. We will hear today from people who have been intimately involved with federal claims on water rights that threaten their homes, businesses, and way of life. It is my hope that we can use this hearing to closely examine:

-- why the stability of an entire community such as Orofino is at serious risk because of an unproven governmental experiment with Idaho's water,

-- how the Bureau of Reclamation can claim authority to come to the table and apply for a water right for a benefit not expressed by state law,

-- how vast federal resources are spent to bog down the adjudication process with thousands of claims on Idaho's water, forcing Idahoans to defend their rights at great expense.

We need to take a close look at these unprecedented actions, and just what direction these policies are taking us.

The most overreaching aspect of the federal government actions has been the use of Idaho's water through flow augmentation in an attempt to recover the endangered salmon. I have serious questions about the National Marine Fisheries Service's "biological opinion," which is not grounded in sound science and is simply an agency's opinion, dictating the flow of Idaho's water. In essence, the practice of flow augmentation of Idaho water simply amounts to the federal government seizing personal and state property for experimental purposes.

The Bureau of Reclamation, originally envisioned as an entity to build dams and provide the means for states to develop arid western lands, has literally changed its mission, from that of a civil works agency to a "water resource management agency." Congress never told the Bureau to change its mission. Yet, through various vague policy initiatives and assertion of authority where it has none, the Bureau has involved itself in the daily operations of thousands of irrigators, which for many of them, has become their worst nightmare.

The Bureau is now attempting to change the nature of use of Idaho's water for the purpose of salmon recovery. While they claim that they simply want the right to purchase water form willing sellers, I'm concerned at the Pandora's box that might be opened if flow augmentation for the salmon becomes approved beneficial use of Idaho water. There may be enough water available this year from willing sellers, but what about a dry year? With the Endangered Species as a tool, the bureau may in the future use other measures to acquire the water, leaving irrigators lower and lower on the priority list. I simply don't think Idahoans want to take that chance.

Several other federal agencies, as well as tribes, have filed thousands of claims to Idaho's water through the Snake River Basin Adjudication process, all at the expense of the U.S. taxpayer. Regardless of the merit of the claim, those defending their rights against the federal government are forced to spend tremendous resources to protect the water while the federal government can bill the taxpayer to file their claims. This process is unfair and often

deters those with bona fide rights from taking action. The federal government wins just by sheer intimidation.

Mr. Chairman, fellow Colleagues, there is nothing more sacred in this state than the sovereignty of our water. I sincerely appreciate your time here today to listen and learn about the federal intrusion we face, and I look forward to working with you to aggressively address these issues.

CONGRESSIONAL HEARING

October 5, 1995

Testimony Submitted to

SUBCOMMITTEE ON WATER AND POWER RESOURCES
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON RESOURCES
JOHN T. DOOLITTLE, CHAIRMAN

Testimony of
State of Idaho
Presented by Philip E. Batt
Governor

I appreciate the opportunity to provide you with the state's perspective on federal/state water relations and the impacts of flow augmentation on water supplies for irrigation and other beneficial uses. These are issues of long standing, yet very current, concern to the citizens of Idaho. Chairman Doolittle, Representative Chenoweth and other distinguished members of the subcommittee, we are grateful that you have taken notice of these issues and that you are taking the time and effort to gather input from those living and working in the areas directly affected.

Idaho is a state that is blessed with tremendous natural resources, and water is recognized as its most valuable natural asset. State sovereignty over the administration, allocation and protection of water continues to be of paramount concern to Idahoans. Idaho has a system of laws, rules and policies for the effective management of the state's water resources in accordance with the will of the citizens of Idaho. All too often, programs and policies of federal agencies encroach upon the state's ability to carry out water management programs critical to the well-being of the people of the state. From time to time, Congress has needed to remind the federal agencies of the traditional deference accorded the states to manage water resources. Such direction may again be timely relative to several existing issues.

The McCarran Amendment was passed by Congress in 1952 to provide for the states adjudicating and administering all water rights, whether created under federal or state law. Because of the necessity to actively manage the use of water in the Snake River Basin, Idaho commenced in 1987 a massive adjudication involving all the rights in the basin which covers 87 percent of the state's land area. More than 170,000 claims have been filed in this landmark case, of which more than 50,000 were claims filed by federal agencies and Indian tribes. At the outset, the state legislature determined that the cost of the adjudication would be shared by all claimants through a schedule of user fees

with each claimant paying a fair share of the administrative and judicial costs.

The federal agencies refused to pay claim fees and have been exempted from payment by a U.S. Supreme Court decision. This shifts the burden to water users and other citizens of Idaho to pay the entire cost of the adjudication even though much of the benefit accrues to the holders of federal and Indian claims that eventually will be decreed. Because of this free ride for the federal agencies, Idaho's water users are paying much more then their fair share. They are paying filing fees on their own claims, they are paying attorneys to prepare and defend their claims, they are paying state taxes to Idaho to fund the deficit created in the fee account by the federal exemption, they are paying federal taxes to support the agencies and the Department of Justice to file and defend federal and Indian tribal claims, and perhaps most frustrating, they are paying federal taxes used by the federal agencies to attack the claims of the private water users. To make matters even worse, the Forest Service, last week, withdrew 3,700 instream flow claims two weeks before the objection deadline, after the state and water user groups had spent substantial funds preparing to file objections to these claims.

This is a matter of fairness that needs to be addressed by Congress taking action to require equitable financial participation by the federal agencies in adjudications in not only Idaho, but several other western states as well. We will be pleased to work with your subcommittee to draft legislation to address this issue.

A second issue of concern to Idaho is the use of Idaho water for flow augmentation in experimental attempts to aid salmon recovery. While the recovery of a viable population of salmon is important to Idaho, the present attempts at recovery rely too heavily upon Idaho water. Irrigated agriculture in Idaho is not responsible for declining salmon runs. Snake River salmon runs thrived for many years after the major irrigation diversions from the Snake River began. It was not until much later in time that the continuing declines in Snake River salmon runs began to occur.

Even so, water users in Southern Idaho are expected to provide significant quantities of water in experimental attempts to solve a problem they did not cause. Idahoans have demonstrated a willingness to work with other states in attempting to save the salmon, but we question the wisdom of flow augmentation. The Idaho legislature changed Idaho water law to allow water to be released for flow augmentation for a three-year period (now extended for a fourth year that ends this December) as a cooperative effort to test the concept, but conditioned the use of Idaho water upon other parties (states, federal and

regional agencies and tribes) also making proportionate contributions.

Since 1991, nearly one million acre feet of stored water have been released past Milner Dam as part of the federal salmon recovery effort. Even larger volumes have been released from Dworshak, Brownlee, Pend Oreille and other Idaho reservoirs. Under the present recovery plan, an additional 427,000 acre feet are being required annually to be released from above Hells Canyon. Studies needed to show the effect on salmon recovery of the releases have not been done. The federal agencies are now saying that perhaps another decade will be needed before the studies will be completed. Is a proportionate contribution being made, or is water from Idaho and other upstream areas being commandeered to avoid facing the real problems that need to be solved?

We are concerned that flow augmentation is expected even on years of above average runoff. This has the potential of hurting salmon during dry years, assuming that flow augmentation has any validity. Stored water released unnecessarily in a previous year, depletes storage that could have been held over and may be sorely needed, but unavailable, the following year.

I have listed the following as prerequisites to continuing use of Idaho water for flow augmentation:

-Any water obtained for salmon flow augmentation must be on a willing seller/willing buyer basis.

-The acquisition and use of the water must comply with Idaho state law.

-The water must be used for scientifically sound recovery efforts.

We have appreciated the efforts of Bureau of Reclamation's Regional Director John Keys, and his staff in cooperating with Idaho while the Bureau works to comply with the flow augmentation mandates set out by the National Marine Fisheries Service. We are concerned, however, that in a dry year when supplies from willing sellers are not sufficient that the Bureau will release water from storage space contracted to agricultural water users who need the water for their livelihoods. Mr. Keys has been advised that he can make such releases even when water must be taken without the agreement of the contracting water user. Action by Congress to clarify that releases can only be made in accordance with state law is needed to prevent such a confrontation from occurring.

Another instance where federal action could impact on state water law involves the Bruneau hot springsnail. On January 25,

1993, the U.S. Fish and Wildlife Service published a final rule in the *Federal Register* listing the snail as an endangered species. This listing was overturned by the U.S. District Court for Idaho because of procedural errors. Key data used in reaching the decision to list was not available to the public during the comment period. The Ninth Circuit Court of Appeals directed that the Service must provide a new period for public comment, must review the record in its entirety, and then decide whether to list the springsnail as an endangered species.

The Bruneau hot springsnail is a species of very small dimension (< 1/4 inch in length) that has been found only in a narrow band of thermal springs and seeps along a 5.3-mile stretch of the Bruneau River and a tributary in Owhyee County, Idaho. The snails are found at more than 100 sites in the area. A declining water table has reduced springsnail habitat leading to concerns about its eventual extinction. The recent prolonged drought and pumping from the regional aquifer are cited as the most likely causes of the decline.

State water law does not require curtailment of the use of valid water rights to protect the snail, but because of concerns about the declining water levels, the state has limited new water withdrawals from the aquifer to domestic and stock uses since 1982. While the U.S. Fish and Wildlife Service did not promulgate a plan for the protection and recovery of the snail at the time of the original listing, the Service made it clear that it intended to pursue enforcement action against irrigators with state water right priorities later than 1970 to prevent their pumping from the aquifer. The impact on the economy of the county could have been severe.

Action to change use of water rights must be limited to condemnation and purchase of agreements with water users, not through other avenues such as prohibiting Farmers Home Administration loans. Congress should direct that executive agencies must fully compensate holders of state water rights when seeking to abridge the use of their water.

There is one other issue which we would like the subcommittee to consider. On Tuesday of this week, we received a copy of draft language proposed by the House Resources Committee for inclusion in the report on the federal budget reconciliation bill regarding the proposed sale of federal power marketing administrations and related assets. While the primary purpose of the proposed language was to address the sale of the Southeastern Power Administration and the potential sales of the Southwestern and Western Area Power Administrations, none of which would directly affect Idaho, we are concerned about the precedent that could be set by some of the proposed language for private power projects under FERC licenses that are not directly affected by

the proposed legislation. Proposed language pertaining to Section 9203, subsection (d)(2) includes the following:

> "Once a transferred project receives its license, the project owner is not required to obtain permits, authorizations or approvals from any other agency with respect to project operations. This provision reaffirms the principal that the Commission has the sole and exclusive licensing authority for non-federal hydropower."

This language would appear to propose exempting FERC licensed projects from state permits, authorizations or approvals as well as from federal authorizations other than from FERC. Additionally, by "reaffirming" that FERC has the sole and exclusive licensing authority, the language could be construed by some to remove state authority over water rights granted for hydroelectric power production and could be used as the basis for deactivating preexisting agreements between states and power producers operating under FERC licenses, such as 1984 Swan Falls Agreement between the State of Idaho and the Idaho Power Company. While we understand the need to create certainty for project investors, the sale of federal power marketing administrations should not be used to preempt state control and administration water resources or render previous agreements noneffective. We would appreciate this subcommittee considering revised language that would recognize state sovereignty over water rights.

Supplemental Sheet

COMMITTEE ON RESOURCES
WATER AND POWER RESOURCES SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES

Hearing: Federal Government Actions Affecting Idahoans' Water Rights
October 5, 1995
Boise, Idaho

Testimony: Philip E. Batt
Governor, State of Idaho
State Capitol Building
Boise, Idaho 83720-0034
Telephone: 208-334-2100

Topical Outline of Testimony and Recommendations:

1. Federal agencies should pay an equitable share of the costs of general adjudications of water rights. **LEGISLATION SHOULD BE ENACTED REQUIRING FEDERAL AGENCIES TO PAY A FAIR SHARE OF THE COST OF ADJUDICATIONS.**

2. Idaho water is being used to test the effect of flow augmentation on salmon survival instead of addressing factors that have caused the decline in salmon populations and without doing the scientific studies to determine if flow augmentation is effective. Release of Idaho storage during years of above average runoff can reduce the carryover of stored water needed to provide flow augmentation on a subsequent dry year. **LEGISLATION SHOULD BE ENACTED TO CLARIFY THAT FLOW AUGMENTATION RELEASES WILL ONLY BE MADE IN ACCORDANCE WITH STATE LAW.**

3. Designations of the Bruneau Hot Springsnail as endangered may restrict use of privately held water rights. **CONGRESS SHOULD INSTRUCT EXECUTIVE AGENCIES TO FULLY COMPENSATE HOLDERS OF PRIVATE WATER RIGHTS FOR DAMAGE IF USE OF WATER IS LIMITED TO PROTECT A LISTED SPECIES.**

4. Proposed changes to regional power marketing authorities would centralize resource management decisions in the Federal Energy Regulatory Commission and prevent the states from managing resources within their boundaries. **ANY LEGISLATION ENACTED SHOULD PROVIDE FOR STATE CONTROL OF WATER AND OTHER NATURAL RESOURCES WITHIN THE BOUNDARIES OF THE STATE.**

STATEMENT OF JOHN KEYS III

before the

HOUSE WATER AND POWER RESOURCES SUBCOMMITTEE

BOISE, IDAHO

OCTOBER 5, 1995

Good Morning. It is a pleasure to address this field hearing of the House Water and Power Resources Subcommittee on the vital topic of water. The Reclamation Act of 1902 established Reclamation as a purely western water resource agency, and laid a strong foundation for a successful state-federal partnership. Section 8 of the 1902 Act provides that the development and operation of Reclamation projects will be undertaken in compliance with state water law. Reclamation has acquired appropriative state water rights for the operation of its projects. Reclamation's water rights include storage rights for the operation of project reservoirs.

Subsequent to the Reclamation Act of 1902 some western states enacted special water laws to provide specific authority to develop federal Reclamation projects. These changes and strong local support prompted Congress to authorize and appropriate funds for many Reclamation projects. Today, about 2.7 million acres in the Pacific Northwest are irrigated from Reclamation project irrigation water, a little less than half of all acres irrigated in the Snake and Columbia River Basins below the Canadian border. Later Acts of Congress have modified Reclamation's operating requirements both generally and specifically. Reclamation must also comply with general statutes like the National Environmental Policy Act, Endangered Species Act and the Northwest Power Act. Reclamation projects benefit people throughout the region by serving irrigation, power, flood control, recreation, and fish and wildlife purposes.

Reclamation projects in the Snake River Basin date back to the period just after passage of the Reclamation Act of 1902. These early projects were constructed by steam power and horse drawn equipment. Idaho and Oregon have seen considerable change in the intervening decades, but these projects are every bit as successful for irrigation today as they were when first constructed. At the same time, there is sufficient operational flexibility to operate these projects to meet special needs that were often not originally contemplated. Reclamation is a water management agency and we will continue to try for improvements in the operation of projects to meet the needs of all stakeholders.

Beginning in 1991, the Bureau of Reclamation has worked closely with the National Marine Fisheries Service (NMFS), the Bonneville Power Administration (BPA), the U.S. Army Corps of Engineers (COE), the Northwest Power Planning Council (NPPC), the U.S. Fish and Wildlife Service (FWS), state, Native American, fishery, hydropower, and irrigation interests in trying to preserve salmon runs in the Pacific Northwest under the Endangered Species Act. Reclamation's salmon restoration efforts have supported the Fish and Wildlife

Program of the NPPC and Biological Opinions of the NMFS on the operation of the Federal Columbia River Power System (FCRPS). The current Biological Opinion of March 2, 1995, is the river passage piece of a broader Salmon recovery program outlined in the NMFS draft salmon Recovery Plan that addresses harvest, hatchery operations, habitat, and river passage.

The NPPC developed a comprehensive salmon recovery strategy in December, 1991 as part of its Columbia River Basin Fish and Wildlife Program. It called for the delivery of 427,000 acre-feet from Bureau of Reclamation uncontracted storage space and water rentals. This same volume of water is requested by NMFS in the current Biological Opinion. The following volumes of water have been provided from Reclamation projects:

Year	Acre-feet Provided		Total Acre-feet Provided
	Reclamation Space	Rental Pools	
1991	40,000	160,000	[a]200,000
1992	90,000	0	90,000
1993	324,000	100,000	424,000
1994	383,000	45,000	428,000
1995	111,000	316,000	427,000

a. Additional Water provided by Idaho Power Company for a total of 427,000 acre-feet.

Providing these releases has proven to be a challenge. Reclamation has made a sincere effort to keep the water users informed of its actions and preserve the integrity of the Project repayment and spaceholder contracts. Reclamation has fully honored its contract commitments to water users throughout this period.

Reclamation will continue to honor its contractual obligations. In order to provide 427,000 acre-feet each year, additional water will be needed, which Reclamation will obtain from willing sellers or lessors. The NMFS Biological Opinion reflects this decision and recognizes Reclamation's close working relationship within state water law by incorporating two important conditions with respect to the 427,000 acre-feet:

- Reclamation will only acquire water from willing sellers
- Reclamation will provide water in accordance with state water law.

Idaho and Oregon water users in the Snake River Basin are being contacted about the possibility of renting or purchasing their water supplies. Reclamation has permanently acquired two blocks of reservoir storage from project reservoirs in Idaho totaling some 22,000 acre-feet. It has also rented water from Idaho irrigation spaceholders in four of the last five years.

Reclamation's decision to acquire water only from willing sellers was made in the early phases of salmon recovery efforts. Reclamation is proud of its heritage as a western water resource agency that has forged strong partnerships with states and local communities, and is committed to meeting fully the requirements of all applicable laws. The willing seller program, in compliance with state water law, provides powerful protection to private water users.

Reclamation's analysis and efforts in providing water have identified many important issues, including:

- Water needs to be provided from a wide variety of sources, including storage, natural flows, short and long term rentals, and dry year options.

- Water should be obtained from the entire area above Lower Granite Dam, including the Idaho, Oregon, and Snake River tributaries below Brownlee.

In 1991, the Idaho Department of Water Resources (IDWR) advised Reclamation to file for a change of use under Idaho water law to properly cover any flow augmentation releases as a valid purpose under state water law. Reclamation made such an application in 1992, after which the Idaho Legislature enacted I.C. 42-1763A, specifically authorizing storage releases for flow augmentation through the 1994 season. All subsequent releases of stored water have complied with that provision of state law. Following Reclamation's 1994 application, the Legislature extended I.C. 1763A through the 1995 irrigation season with the condition that Reclamation hold in abeyance all water right change requests for one year. Reclamation complied by asking the Idaho Department of Water Resources to delay processing the application. Reclamation filed change of use applications on May 15, 1995, upon the expiration of the Legislature's moratorium.

Reclamation made clear in its application that the change was for 427,000 acre-feet of water. However, because Reclamation cannot know at this time at which storage facilities it will find sellers willing to sell water rights or renters willing to rent water on an annual basis, Reclamation, after consulting with the IDWR and seeking the input of Idaho water users, decided to apply to add salmon flow augmentation as one of the authorized uses for all of its facilities. Reclamation has reiterated on several occasions that the additional authorized use, if granted, is to be conditioned on an upper limit of 427,000 acre-feet, and that if Reclamation were to seek flow augmentation amounts above 427,000, it would need to file a new change of use application.

In accordance with the administrative provisions of the IDWR, some 80 entities and individuals, representing a wide spectrum of interests, filed protests or requests for intervention to the May 15 change of use application. Subsequently, and in accordance with IDWR administrative provisions, Reclamation and the Solicitor's Office have had several conversations with water user attorneys and named representatives for the purpose of exploring a mutually acceptable mechanism for providing the water for flow augmentation short of the expensive and potentially divisive hearing process. On September 19, 1995, IDWR Director Dreher approved an interlocutory order approving the stipulation negotiated

between Reclamation and the protestants. The negotiated stipulation had been approved verbally or in writing by each and every protestant and intervenor. In compliance with the provisions of the stipulation, Reclamation has had preliminary discussions with several water user representatives and a series of meetings involving the protestants are being planned jointly by the parties for later this year.

Thank you for the opportunity to provide testimony about Reclamation's activities. I would be glad to respond to any questions you may have.

OCT-03-95 TUE 04:30 PM CUDDY 208 476 5042 P.01

CHARLES D. CUDDY
DISTRICT 7
BENEWAH, CLEARWATER,
IDAHO LATAH, LEWIS
& NEZ PERCE COUNTIES

HOME ADDRESS
P.O. BOX 84
OROFINO, IDAHO 83544
BUSINESS (208) 476-4543
RESIDENCE (208) 476-3729

COMMITTEES
REVENUE & TAXATION
RESOURCES & CONSERVATION
TRANSPORTATION & DEFENSE

House of Representatives
State of Idaho

BEFORE THE SUBCOMMITTEE ON WATER & POWER RESOURCES

The Honorable John T. Doolittle, Chairman

Submitted By

Charles D. Cuddy, State Representative
Idaho Legislative District 7

October 5, 1995

CHARLES D. CUDDY
DISTRICT 7
BENEWAH, CLEARWATER,
IDAHO, LATAH, LEWIS
& NEZ PERCE COUNTIES

HOME ADDRESS
P.O. BOX 64
OROFINO, IDAHO 83544
BUSINESS (208) 476-4643
RESIDENCE (208) 476-3729

COMMITTEES
REVENUE & TAXATION
RESOURCES & CONSERVATION
TRANSPORTATION & DEFENSE

House of Representatives
State of Idaho

Mr. Chairman and Committee Members:

I am pleased and honored to testify before you today.

I am State Representative Charlee Cuddy, representing the 7th Legislative District which encompasses approximately 13,000 square miles of North Central Idaho. This district combines nearly all of the Clearwater River drainage, a part of the Saint Joe and Snake Rivers, and a fair amount of the Salmon River drainage. These rivers represent the majority of Idaho's flowing water. Elevation varies from less then 1,000 feet to approximately 10,000 feet. Precipitation throughout the district varies from less than 15 inches per year to over 60 inches per year. The vegetation varies from arid grasslands to very productive non-irrigated agriculture to the most productive timberlands in the inland United States.

Understandably, I am very interested in a myriad of water issues and their relationship to the productivity, economy and quality of life of not only my district but all of Idaho. Today I will address interrelated circumstances, which are a derivative of Salmon recovery.

The first being Dworshak Reservoir, a federally owned and operated water storage facility situated on the North Fork of the Clearwater River. This reservoir is recognized not only for its high water quality but also its cool temperture, although it drains the area that has and continues to produce the major part of the districts raw material for our major wood products and is the heart of the most productive forest in the inland United States.

Dworshak Dam was portrayed to the people of Idaho, commissioned and economically justified to produce power and provide flood control and recreation. When Dworshak Dam was purposed the local communities felt secure with the explanation that drawdowns would occur during winter to provide power and supplemental water for power generation for the down stream Snake and Colombia River hydroelectric projects during peak power needs. By this method storage was available for spring runoff, providing flood control and the pool was adequately refilled to maximize recreational benefits

from mid spring to mid autumn. All of the commissioned criteria were being met. This method of operation also minimized loss to the resident fishery as the drawdown occurred during their most dormant period.

Prior to the construction of Dworshak Dam, Potlatch Corporation annually used this river to drive logs during spring runoff for a distance of up to 90 miles. To mitigate this loss the United States contractually agreed with Potlatch Corporation and other wood product companies to tug log rafts the length of the pool. Private and public facilities were constructed to accommodate this use at various locations along the pool. All of these operations and functions worked harmoniously and satisfactorily until a strain of Sockeye Salmon, native to the Salmon River, was named as an endangered species. A species, that in fact, prior to this time was considered for all practical purposes extinct by many respected fishery biologists. (Attachment 1, page 2).

In 1992 we began experiencing summer drawdowns of Dworshak Reservoir to save this species of salmon. This drawdown directly and adversely affected two of the three commissioned uses of this public facility, those being power generation and recreation. The contracted use for log handling was curtailed due to unusable facilities. These drawdowns have continued annually since this occurrence with one exception, the drawdowns have increased from 50 feet the first year to 100 feet or more in 1994 and 1995. The adverse affects are due to the fact that these drawdowns now occur between May and August with refill not occurring until May and early June of the following year.

A recent study by the Corps of Engineers revealed that recreational economic loss to Orofino, Idaho (a community of approximately 3500 people) to be $7,000,000 per year and ranging as high as $15,000,000 per year. Cumulative power loss from Dworshak and down river dams is estimated at approximately $400,000,000 per year. The log transportation situation directly affects the state school endowment and other public funds due to greatly increased log shipping cost from harvested timber. (Attachment 2)

The reality of the situation is that since two separate species of Chinook Salmon were listed in this same drainage regulatory attention to sustaining the Sockeye run has greatly diminished, but increased demand for flow augmentation water from Dworshak has certainly increased..

Analysis of statistics in the 1992 Colombia River Salmon Flow Measures Draft E.I.S. states that by 1938 the salmon populations returning to the Colombia River had been reduced by some 50%. 1938 was the year Bonneville (the first lower Colombia River dam) was completed. By any arithmetic scenario desired it reveals that what we are experiencing today in regards to diminishing anadromous fisheries should not be surprising. (Attachment 3)

Under current recovery operations 65% of Dworshak's active storage capacity is being used for salmonoid recovery. This also amounts to 76% of the Snake River contribution of stored water for flow augmentation, fish flush, etc.. Keep in mind the mean annual flow to Dworshak Reservoir is approximately 6,800 cfs and the mean annual flow of the Snake River, before the Clearwater River enters, is 34,000 cfs and five miles down river where it leaves Idaho at the confluence of the Clearwater it is approximately 45,000 cfs. (Attachment 4)

When one considers that the Snake River drainage consists of most of Idaho, South Eastern Washington, much of Eastern Oregon, and part of Nevada and Wyoming, obviously the burden of recovery is not being equitably shared when one county in Idaho is making 76% of the contribution. (Attachment 5, Page 1, Paragraph 1)

A review of the returning listed salmonoid indicates a number in the neighborhood of 500. This represents a cost of $800,000 each. Maybe we should consider how many children this would provide a college education; how many miles of deteriorated highway this would repair; or in the case of water quality, how many acres of wildfire scorched land this would revegetate; and how many effluent problems we would rectify.

I want to make it clear that we are not opposed to Salmon recovery, but equity, feasibility, economics and local governments must be an integral part of water management in the West.

As a derivative of these drawdowns we have seen continued decrease in Steelhead population, the only remaining viable anadromous fishery that inhabits the Snake River and its tributaries. We are now seeing efforts to list this species of salmonoid; and Mr. Chairman and Committee Members we are out of spare water!

I had hoped I could reduce my testimony regarding Dworshak to the point I could briefly outline impacts of a related issue, that Pacfish affects water quality and salmonoid recovery and is impacting timber supply (Idaho's third largest industry) but we do not have the time. (Attachment 6)

I want to thank you on behalf of myself and my constituents for making available the opportunity to appear before you today.

CHARLES D. CUDDY
DISTRICT 7
CLEARWATER, IDAHO
& LEWIS COUNTIES

HOME 877-9511
P.O. BOX 84
OROFINO, IDAHO 83544
BUSINESS (208) 476-4843
RESIDENCE (208) 476-3729

ATTACHMENT 1

COMMITTEES
RESOURCES & ENVIRONMENT
LOCAL GOVERNMENT

House of Representatives
State of Idaho

February 5, 1992

Mr. Greg Graham
Walla Walla District
Corps of Engineers
City County Airport
Walla Walla, WA 99362-9265

Dear Greg:

After research and discussion with numereus technical individuals I am convinced that the proposed fish flush will not provide the desired result. From my conversations with various hydrologists, I must seriously question whether cool water released from Dworshak Reservoir will mix; it may remain stratified and accomplish negligible overall temperature change.

An additional concern involves the fact that all downstream pools contain vast amounts of sediment. When these pool levels are lowered and velocity increased, the bed load movement may damage certain chinook spawning areas and disrupt existing established river fisheries. Further damage to structures, mechanical and hydraulic equipment may also be extensive.

Commerce will also be negatively effected by this proposal. Due to barge schedules, downriver shipping from the Lewiston-Clarkston terminals will be interrupted approximately 60 days as a result of the 30 day drawdown.

The commissioned use of the Dworshak Project was flood control, power generation and recreation. The demand and timing of the drawdown will not contribute to efficient use of the water for power generation purposes in terms of peak power, high use rate periods and power exchange with other areas that represent consumer advantage.

Additionally, the recreational value of Dworshak will be nearly voided by the creation of non-functional parks, boat launches and extremely unsightly views of mud banks between full pool and drawdown levels. When game fish population diminishes as a derivative of these drawdowns the recreational value of Dworshak will only decrease, with time, rendering it virtually valueless as an area asset.

ATTACHMENT 1

The following is abstracted from a paper authored by Willa Nehlsen, Jack E. Williams and James A. Lichatowich, members of the American Fisheries Society/Endangered Fisheries Society.

> "Sockeye in the Colombia River Basin have been heavily impacted by loss of an estimated 96 percent of their habitat (Northwest Power Planning Council, 1986). The Snake River sockeye is now considered to be functionally extinct; two fish were reported in Lower Granite Dam in 1989 and one in 1990. Today production is limited to Redfish Lake in Stanley Basin."

Table 1 on page 11 of this paper lists 76 strains of anadromus fish at risk in the Colombia River Basin. The diversity of locations and tributaries reveals that these risk species and strains are distributed throughout the Columbia River system.

In summary, this experiment appears to be an appeasement rather than a solution and has largely disregarded the socio-economic impacts created in the Snake River Basin. On the basis of potentially negative impacts on the area's usefulness for recreation, power generation and commerce as well as the questionable efficacy of the proposed drawdown, I must oppose this drawdown as based on inconclusive and incomplete study.

Very truly yours,

Chuck Cuddy
State Representative
District 7

CHARLES D. CUDDY
DISTRICT 7
BENEWAH CLEARWATER
IDAHO LATAH LEWIS
& NEZ PERCE COUNTIES

HOME ADDRESS
P.O. BOX 64
OROFINO IDAHO 83544
BUSINESS (208) 476-4643
RESIDENCE (208) 476-3779

ATTACHMENT 2

COMMITTEES
REVENUE & TAXATION
RESOURCES & CONSERVATION
TRANSPORTATION & DEFENSE

House of Representatives
State of Idaho

October 1, 1993

Colonel Paul F. Winborg, Chief
U.S. Corps of Engineers
Walla Walla District
Walla Walla, Washington 99362

Dear Colonel Winborg,

It was recently brought to my attention by the Northfork Log Users Association that their use of the Dworshak Reservoir has been severely restricted by the imposed drawdowns. The alternative to this method of log shipment requires long truck hauls over adverse grades, increasing the shipping cost to between $70.00 - $90.00 per 1000 board feet, depending on the locations of the sale and the purchaser.

This increased shipping cost is reflected in the stumpage price paid for the resource, reducing the benefit to the owner which, in the upper reaches of the reservoir, includes a considerable amount of state and federal land.

Timber harvest from either of these public entities represents a substantial contribution to county road and bridge funds, local school districts and the State Endowment Fund, which primarily benefits education.

For example: This year's harvest of one forest service timber sale located adjacent to Dworshak Reservoir was 3,000,000 board feet. The increased transportation cost decreased the county and school district's shares approximately $60,000.00. Some of the largest blocks of state owned timber to be harvested in the near future are situated along the upper reaches of Dworshak Reservoir, as were some of the largest state harvests in the recent past. This deletion of shipping access represents a substantial loss to the State Endowment Fund and will continue until this shipping capability is restored.

I would hope you and your staff would assist our community and state with recovery of the incurred revenue loss.

After a recent trip viewing state land in the Dworshak Reservoir area, it occurred to me you may be in a position to partially reimburse some of this loss to these agencies. The large amount of land you manage adjacent to the reservoir contains dead, dying and diseased timber and is generally directly adjacent to areas that contain overland access for timber land management. By use of appropriate methods, much of this resource could be marketed without diminishing the scenic value for recreators. The riparian value, although greatly reduced via drawdown does not constitute a large amount of this real estate.

Good management would in fact improve the scenic value of the real estate with healthier trees, reduced fire hazard and improved game habitat, and create less opportunity for forest disease to spread to adjacent owners.

ATTACHMENT 2

By contribution to local government on the same basis as the forest service and to the State Endowment Fund in a similar manner on those lands that were state owned prior to Dworshak project ownership you would be showing a good faith effort toward mitigating local government transportation losses with the resource available through the Walla Walla District.

I hope you will give this option serious consideration and I will assist you, if possible, to expedite this opportunity I believe it further works to your advantage to let the local community know that the rule of thumb is nine sustained jobs for every one million board feet of lumber produced.

Thank you for reviewing these suggestions.

Very truly yours,

Charles D. Cuddy
State Representative
District 7

CDC:k

CHARLES D. CUDDY
DISTRICT 7
BENEWAH, CLEARWATER,
IDAHO, LATAH, LEWIS
& NEZ PERCE COUNTIES
HOME ADDRESS
P.O. BOX 64
ORofino, IDAHO 83544
BUSINESS (208) 476-4843
RESIDENCE (208) 476-3729

ATTACHMENT 3

COMMITTEES
REVENUE & TAXATION
RESOURCES & CONSERVATION
TRANSPORTATION & DEFENSE

House of Representatives
State of Idaho

May 15, 1995

Mr. Will Stelle, Northwest Regional Director
National Marine Fisheries Service
7600 Sandpoint Way Northeast
Seattle, WA 88115-6349

RE: NMFS Draft Recovery Plan

Dear Mr. Stelle:

Due to previous travel arrangements I am unable to attend the Public Hearing tonight in Lewiston regarding the National Marine Fisheries Proposed Recovery Plan for Snake River Salmon. In leu of this, please accept this letter as my written comments for tonights hearing.

First and foremost I want to make it clear that the people of the upper Clearwater have continually demonstrated through prior contributions of Dworshak water a positive intention to save the spring Chinook and Steelhead fisheries. The primary dissent to this recovery plan that we rightfully have is the totally disproportionate share of the recovery burden placed on the North fork of the Clearwater River, particularly when we are again required to provide the greatest share of the Snake River contribution for summer and fall Chinook. It is beyond my comprehension to believe any one can disagree that a stream that supplies less than one quarter of the water leaving Idaho at Lewiston but is furnishing three quarters of the requested down stream draft is not being disproportionately burdened.

A brief review of Columbia Salmon statistics taken from the 1992 Draft E.I.S regarding flow analysis is quite revealing Item 1.5 *Status of Salmon*, presents some interesting figures including a glaring misstatement. The figures in this item indicate that there were up to 16 million Salmon and Steelhead returning to the Colombia River and by 1938 (the completion of the Bonneville Dam) they had been reduced to approximately 5 - 6 million. Making a reasonable assumption that nearly this amount was there at the turn of the century or before development became a primary issue, lets estimate there were 80% of the 16 million still returning, or 12,800,000. If in fact the return in 1938 was a mean of

5 5 million, we were at 43% return from the turn of the century, or a loss of 1.76% per annum One scenario would show that we should have been out of fish by 1963

Even if we begin with 100% in 1938 and continued the 1.76% decline we would again reach 0 in 57 years or 1995. Using this pre dam scenario for calculating purposes it gives rise to the possibility there are problems much more serious than those encountered after entrance to fresh water.

The missiatement I mentioned earlier follows In regards to declining Salmon and Steelhead returns the 1992 Draft E.I.S states that "By 1938 when Bonneville Dam was completed, this number had fallen to 5 to 6 million, mainly as a result of over fishing and the affects of up stream storage dams (Grand Coulee, Brownlee and Dworshak Dams), which blocked spawning runs." The fact is none of these dams existed in 1938 . This tends to undermine the conclusion that up stream storage dams blocked spawning runs since they did not exist at that time.

The subject of blockage by these dams raises the last issue I want to address With respect to size of river and mean flow, which is comparatively reflective of drainage area and tributaries, the decimation of spawning habitat due to the previously stated three main blockages is revealing in itself. Particularly when the North fork of the Clearwater was not to my recollection acclaimed for a Chinook Salmon spawning river. Per the 1992 E.I S, the Columbia River at Grand Coulee has 107,700 cfs mean annual flow and a 79,100 square mile drainage area The Snake River at Brownlee has 16,530 cfs mean annual flow and a 72,500 square mile drainage area The Clearwater River at Spaulding has 14,110 cfs mean annual flow and a 8,300 square mile drainage area. Dworshak, having a mean annual flow of approximately 6,800 cfs and a drainage area of 4,000 square miles should by ratio only contribute to 2.6% of the habitat loss based on area, or 5 2% based on mean annual water contribution.

In comparison, Dworshak has contributed considerably more than its 4% (5 2+2 6 divided by 2) share to assist with recovery In the case of a Snake River/North fork comparison, the ratio is approximately 75% contribution with 20% of the available water. I again submit what I believe to be a reasonable contribution for the Clearwater River toward spring Chinook recovery

Of the 1,700,000 acre feet of water required from Idaho, 1,300,000 is to be supplied by Dworshak Reservoir or 76% of the Snake River draft. One must keep in mind the Snake River also drains a large amount of Eastern Oregon and a portion of Eastern Washington

It is only equitable that these adjacent states should contribute to the proposed solution when and where it is possible.

When this approach is taken, Brownlee Dam stands out as the most feasible contributor. It is located on the Snake River upstream of Lewiston. It blocks all Salmon runs that used to occur in the Payette, Boise, Owyhee, Powder and other upstream tributaries to the Snake River. Draft from this reservoir could also enhance return to the Imnaha and Grand Rhonde Rivers of Oregon

The Snake River at Asotin, having an average annual flow of 34,000 cfs compared to the North fork of the Clearwater at 6,800 cfs., should by equality supply 5 times the water contribution. I contend that 1,000,000 acre feet from Brownlee and 400,000 acre feet from Dworshak (although Dworshak is still contributing double its proportionate share) comes much closer to equity than existing proposals

I fully understand that the Idaho Power Company must be compensated for their contribution to recovery, but believe it to be within the scope of the E.S.A to equitably reimburse all that are damaged by any recovery program

Sincerely,

Charles D Cuddy

Charles D Cuddy
Idaho State Representative
District 7

CHARLES D. CUDDY
DISTRICT 7
BENEWAH, CLEARWATER
IDAHO, LATAH, LEWIS
& NEZ PERCE COUNTIES

HOME ADDRESS
P.O. BOX 64
OROFINO, IDAHO 83544
BUSINESS (208) 476-4541
RESIDENCE (208) 476-7725

ATTACHMENT 4

COMMITTEES

House of Representatives
State of Idaho

May 9, 1995

Mr. Todd Maddock and Mr. Mike Field
Idaho Members Northwest Power Planning Council

Re: Public Hearing - Post Falls, ID

Before the Power Planning Council written comments - Charles D. Cuddy - State Representative, District 7

I want to thank you for the invitation to appear before you today, but a change of schedule precluded my personal appearance.

I appreciate the special efforts you and Mr. Field are putting forth to hear the concerns and comments of all interests regarding Salmon recovery.

Being a business person residing in a resource and agricultural district, my thinking tends to be result oriented. My belief is that Government operations should also include this attitude, particularly in regard to experimentation.

In regards to Salmon recovery, we now have been flushing, augmenting, drawing down, and usurping our own rules for about five years. The end result being a continued loss of returning Salmon.

Included in this scenario is the decline in returning Steelhead, which appears to have increased since the beginning of this Salmon recovery experimentation.

The real issue then becomes the capability of the National Marine Fisheries Service, and the credibility of their proposed recovery plan.

1. When predictions range from 16 - 40 years for recovery at varying estimates of $500,000 - $10,000,000 per fish, what can the public actually expect the real recovery period and cost to be?

2. When Pend Oreille Lake is left alone for Kokanee protection, while ignoring the loss of the same species in Dworshak and Kookanosa (not to mention Spiney Ray populations), what criteria is used to distinguish between these bodies of water when determining what ones can and cannot afford to suffer loss of these species?

3. With glaring scientific evidence available showing that dissolved gases in excess of 110% (and possibly less) are detrimental to Salmonoid and other species, why does exceedence of 110% continue to be recommended and implemented?

ATTACHMENT 4

Charles D. Cuddy
District 7

Page 2

4 Why is there continued disregard to other threatened species of Salmonoid habitat affected by Salmon recovery ?

6 When National Marine Fisheries demand strengthened forest practices in Salmon habitat drainage basins but condone "Let It Burn" policies within the same basins, does this not show a disregard for water quality for endangered and threatened species of Salmonoid ?

7 Why does National Marine Fisheries Services continue to delay timber sales that require action as trivial as hauling fuel to helicopters or arranging the use of existing gravel surface Forest Service roads (not new road construction) ? The latter State of Idaho timber sale mentioned has been delayed for 1 1/2 years causing a large reduction in the amount of revenue the school endowment fund will receive due to decreased stumpage values .

The sum and substance of this scenario gives rise to many questions that I believe are worthy of straightforward resolutions

1 Could National Marine Fisheries Services or any other agency that selectively enforces standards in one regard and ignore them in a related situation represent scientific direction ?

2 When practices that directly result in harm to the very species being protected, are those that perpetrate such action immune to violation of the E.S.A. ?

3 Do we actually have a plan that will ultimately achieve recovery and continue to be successful while maintaining the other uses of our water that are essential to the well being of Idaho and the Northwest ?

I firmly believe the time is here for the agency or agencies with authority to either tell us what the long term recovery plan is, what the mile posts are we can use for measuring achievement, and what the ultimate cost is

If this is an impossibility then the remaining scenario is that those agencies should be forthright to insure ensuing necessary political decisions are achievable

A separate issue is now before us, that being the summer water demand to be placed on Idaho for fall Chinook. Again, the expectation is that Dworshak Reservoir will be called upon to make the sacrifice

It is my understanding these are primarily main channel spawning fish and therefore the responsibility for these purported needs should appropriately be placed upon those directly benefitted. Therefore the responsibility should fall on the Snake River to supply the water, particularly when the Northfork of the Clearwater already supplied the primary excess for spring flush

One must remember that of the 1,700,000 acre feet of water to be supplied from Idaho, 76% is designated to come from Dworshak Dam, which has an active storage capacity of 2,000,000 acre feet. This would use 63% or better of active storage. When one reviews the capacity of Oxbow, Brownlee and Hells Canyon dams, they combine for a total active storage of 1,000,000 acre feet

Charles D. Cuddy
District 7

Page 1

The Snake River has an average annual flow of 34,000 cfs at Asotin, Washington. Comparatively, the Northfork of the Clearwater at Ahsahka has an annual average flow of 6,800 cfs or some 20% of the annual capacity of the Snake River

The middle Snake River flushing capability appears as follows

1,000,000 acre feet at 30,000 cfs = 403 hours or 16.8 days to replace

From Dworshak

400,000 acre feet at 6,800 cfs = 711 hours or 29.7 days to replace

Although Dworshak would still be called on to supply double the river capability of the Snake River it certainly would provide a more equitable solution

I understand that purchase of some of this water would be necessary and power replacement provided for, but under the present interpretation of the E.S.A. this appears to be applicable. Certainly this puts some degree of equality back in the proposed plan

It is my feeling this solution of equity should have already occurred, but since this alternative has not been publicly heard and in most cases publicly dispersed information lists only one of the three mid Snake River Dams it apparently is not intended to be an alternative

I am hesitant to believe adjudication is required to reinstall reality and equity but appears to be our last remaining alternative

ATTACHMENT 5

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
WALLA WALLA, WASHINGTON 99362-9265

REPLY TO
ATTENTION OF:

May 12, 1992

Planning Division

Honorable Charles D. Cuddy
Idaho House of Representatives
Post Office Box 64
Orofino, Idaho 83544

Dear Mr. Cuddy:

This in response to your letter, dated April 15, 1992, concerning the use of Dworshak to augment fish flows in the Snake River. The actions that we are implementing in 1992 are not intended to make Clearwater County, or any other county, absorb the majority of the impacts of the measures to improve conditions for the threatened or endangered salmon. However, there are limits as to what the Corps of Engineers can do to improve migration conditions, and we have attempted to explore all those options. Other agencies are implementing actions that are within their authority.

The original purposes identified in the authorization of Dworshak Dam and Reservoir did not include fish and wildlife uses. However, there have been many changes that have occurred since that authorization became effective in 1962. Over the years, other laws, such as the Pacific Northwest Electric Power Planning and Conservation Act and the Endangered Species Act, have changed the requirements for water releases from Dworshak.

The Corps of Engineers is required to work with the Northwest Power Planning Council (NPPC) on the implementation of the Fish and Wildlife Program by Section 4(h)(11)(A) of the Pacific Northwest Electric Power Planning and Conservation Act. The Corps worked with NPPC in the early 1980's on the analysis of the Water Budget, which included the release of water from Dworshak for fish flow augmentation purposes. The Corps prepared an Environmental Assessment on the Water Budget that identified no significant impacts. Essentially, power production at Dworshak was curtailed to allow Dworshak water to be used for fish. Eventually the Council's Fish and Wildlife Program was amended to include the Water Budget. This plan was modified again this year as a result of the December 1991 Amendments to the Council's Fish and Wildlife Program. The Columbia River Salmon Flow Measures - 1992 Options Analysis/ Environmental Impact Statement (OA/EIS), prepared by the Corps, reflects the Amendments.

In addition, recommendations made by the National Marine Fisheries Service (NMFS) under the Endangered Species Act led to summer (mid-June through August) releases from Dworshak for juvenile fall chinook migration. These recommendations were identified in the Biological Opinion, which NMFS prepared as part of the consultation process for the OA/EIS. Even though these summer releases were a change to the preferred plan identified in the OA/EIS, the effects of this operation were considered to be adequately covered in the EIS.

The measures identified in the OA/EIS, as the preferred plan, for improving salmon migration were developed as a regional process for 1992 interim actions and tests. The intent was not to implement the Idaho Plan. The cooperating agencies implemented extensive agency coordination and public involvement programs. The NPPC's Amendment Plan also included an intensive public involvement program. Further, the NPPC Amendments are approved by Council members that represent the interests of Oregon, Washington, Idaho, and Montana.

The public participation required for the OA/EIS also satisfied the requirements of Section 310(b) and Sections 415(b) of the Water Resources Development Act of 1990. Section 310(b) requires public participation in changes to reservoir operation criteria. Section 415(b) requires public notification of actions associated with drawdown of Dworshak Reservoir.

The Snake River sockeye salmon runs have been significantly reduced from their original number. This has been the result of many different factors, as spelled out by NMFS in their papers, "Status Review for Snake River Sockeye Salmon" and "Factors for Decline of the Snake River Sockeye." Returning numbers of adults have been very low in the last 10 years, including 1 year in which none were counted (1990). The amount of their original spawning habitat has been substantially reduced; however, there is still spawning habitat available in the Stanley Basin.

Evidence presented by NMFS indicates that this population may still be viable. Sockeye populations vary considerably, having reached a low of 11 in 1961, and rebounding to numbers between 500 and over 1,000 in the late 1960's to early 1970's. Although the offspring of the four fish that made it back to Redfish Lake in 1991 are being assisted in their spawning, rearing, and migration efforts, it is important to note that measures proposed to help downstream sockeye migrants, such as flow augmentation, are also important for downstream Snake River spring/summer and fall chinook migrants, which are now listed as "threatened" under the Endangered Species Act.

At the public meeting in Orofino, an issue of concern was the sale of 300,000 acre-feet of water in Cascade Reservoir to the State of Idaho. This action is being conducted by the Bureau of Reclamation (BOR).

BOR has prepared a Draft Environmental Assessment (EA) for this proposed action. The preferred plan identified in the EA not only includes the sale of 300,000 acre-feet in Cascade but 80,000 acre-feet from Deadwood Reservoir. In addition, 97,000 acre-feet (72,000 acre-feet in Cascade and 25,000 acre-feet in Deadwood) would be designated for flow augmentation for salmon migration and the protection of Cascade Bald Eagle populations. In the EA, it identifies the need to retain the 380,000 acre-feet in Cascade and Deadwood Reservoirs for conservation needs for resident fisheries, wildlife, preservation of bald eagles, water quality, and recreation. Water quality is a primary concern at Cascade Reservoir. Of particular concern is the direct food chain link between water quality and the ability to support a healthy fishery and the role of that fishery as a major prey base for the bald eagles. For these reasons, BOR established and has maintained the conservation pool at 300,000 acre-feet at Cascade Reservoir.

At this time, the EA is only in draft form. Public comments were due May 4, 1992. If you wish to obtain more information on this issue, please contact Mr. Bob Christensen of BOR at (208) 334-9442.

Please feel free to contact me or Mr. Greg Graham at (509) 522-6596 if you have any questions concerning this information.

Sincerely,

Robert D. Volz
Lieutenant Colonel, Corps of Engineers
District Engineer

CHARLES D. CUDDY
DISTRICT 7
BENEWAH, CLEARWATER,
IDAHO, LATAH, LEWIS
NEZ PERCE COUNTIES

HOME ADDRESS
P.O. BOX 64
OROFINO, IDAHO 83544
BUSINESS (208) 476-4040
RESIDENCE (208) 476-3729

ATTACHMENT 6

COMMITTEES
REVENUE & TAXATION
RESOURCES & CONSERVATION
TRANSPORTATION & DEFENSE

House of Representatives
State of Idaho

MAY 16, 1994

"PACFISH EA"
U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE
POST OFFICE BOX 96090
WASHINGTON, D.C., 20090-6090

ATTN: JACK WARD THOMAS, CHIEF, USDA FOREST SERVICE
MIKE DOMBECK, ACTING DIRECTOR,
USDI BUREAU OF LAND MANAGEMENT

GENTLEMEN:

SUBMITTED HEREIN IS MY RESPONSE AND COMMENTS REGARDING THE "PACFISH EA".

VERY TRULY YOURS,

CHARLES D. CUDDY
STATE REPRESENTATIVE, DIST. 7

CDC:k
ENCLOSURES

ATTACHMENT 6

RESPONSE TO ENVIRONMENTAL ASSESSMENT CONTAINED IN THE PROPOSED INTERM STRATEGY FOR MANAGING ANADROMOUS FISH IN THE INLAND NORTHWEST, COMMONLY KNOWN AS PACFISH.

MY FIRST ENCOUNTER WITH PACFISH WAS IN THE LATE SUMMER OF 1993, AT A WESTERN STATES FORESTRY TASK FORCE MEETING HELD IN LEWISTON, IDAHO. DURING THE EXPLANATIONS PRESENTED AT THAT MEETING, I RAISED THE QUESTION OF THE GEOLOGIC, TOPOGRAPHIC, BOTANICAL, HYDROLOGIC, AND HYDROLIC CRITERIA USED TO ARRIVE AT THE FIGURES FOR THE SUPPOSED NUMBER OF POOLS AND LENGTH OF RIFFLE THAT SHOULD EXIST IN ANY GIVEN STREAM.

I REPEATED THIS SAME QUESTION AT A FOREST SERVICE PRESENTATION IN LEWISTON, IDAHO, IN APRIL 1993. TO DATE, NO ONE HAS SUPPLIED THE ANSWER. HAVING WORKED AND RECREATED EXTENSIVELY IN THE CLEARWATER, NEZPERCE AND ST. JOE FORESTS, I CAN READILY UNDERSTAND WHY THE ANSWER WAS NOT IMMEDIATELY FORTHCOMING, AND THIS SCIENTIFIC DATA IS EXCLUDED FROM THE E.A.

IT IS MY EXPERIENCE THAT DRAINAGES A FEW MILES APART CERTAINLY DIFFER. BY MY OBSERVATION, PRIMARILY THIS IS A DERIVITIVE OF TWO (2) VERY BASIC CRITERIA, GRADIENT AND WIDTH OF CANYON FLOOR. OTHER FACTORS THAT AFFECT DIFFERENCE ARE TYPE AND SIZE OF VEGITATION AND GEOLOGIC FORMATION.

WILD FIRE DEVASTATED TERRAIN IS AS GREAT, AND IN MANY CASES, A GREATER SOURCE OF NON-POINT POLUTION AND LOSS OF REPARIAN VEGETATION THAN MAN-MADE SITUATIONS: SUCH AS LOGGING, ROAD CONSTRUCTION AND RIPARIAN RECREATION. THE E.A. IS AGAIN FLAWED BY NOT INCUDING A VERY STRINGENT FIRE PREVENTION AND EXTINGUISHMENT PROGRAM, I.E., THE RECENT BOISE NATIONAL FOREST FIRE THAT HAS LEFT THOUSANDS OF ACRES WITHOUT GROUND COVER AND DESTROYED BULL TROUT HABITAT. IT HAS ALSO ALTERED THE SOILS' CONDITION TO THE POINT REVEGETATION WILL BE VERY DIFFICULT AND IN SOME AREAS, MAY NOT OCCUR UNTIL SOME UNKNOWN FUTURE DATE.

THE ECONOMIC IMPACT IS SCARCELY MENTIONED AND ADMITTEDLY ON A NATIONAL SCALE, CAN BE DEEMED INSIGNIFICANT, ALTHOUGH IT CERTAINLY LENDS NOTHING TO THE CREDIBILITY OF THE ASSESSMENT.

IF THIS IS TO BE THE CHOSEN METHOD OF ASSESSMENT, IT SHOULD INCLUDE CUMULATIVE IMPACT OF EVERY SPECIES AND SPECIES RESTRICTION CREATED UNDER THE ESA IN AND ON THE NATION.

AT THE VERY LEAST, THE SALMON RECOVERY, SPOTTED OWL, GRIZZLY BEAR, GRAY WOLF, ETC. PROTECTION AND HABITATS SHOULD BE CONSIDERED AS ONE IMPACT ON THE NORTHWEST. TO BE SPECIFIC TO THIS PACFISH PROPOSAL WHICH COVERS A LARGE AREA OF THE NORTHWEST AND REFERRING SPECIFICALLY TO PAGE 64, OVER 90% OF THE IMPACT FALLS ON THE CLEARWATER NATIONAL FOREST.

TO REDUCE THAT PART OF THIS NATIONAL FOREST DEDICATED TO TIMBER PRODUCTION BY 25% CERTAINLY CREATES AN IMPACT ON A COMMUNITY DEPENDANT ON WOOD PRODUCTS FOR ECONOMIC STABILITY, PARTICULARLY WHEN THIS PROPOSAL MANDATES A SUBSTANTIAL CHANGE IN CURRENT FOREST PRACTICES WHICH WILL TAKE TWO-THREE (2-3) YEARS TO REALIZE IMPLEMENTATION.

THIS ADDITIONAL TIME FRAME AND REDUCTION WHEN CONSIDERED WITH FEDERAL FOREST MANAGEMENT WHICH HAS FOR ALL PRACTICAL PURPOSES BEEN IN LIMBO FOR THE PAST FOUR-FIVE (4-5) YEARS, COMPOUNDS THE SEVERITY OF THE IMPACT ON THE COMMUNITIES DIRECTLY AFFECTED.

ALTHOUGH IT IS NOT PARTICULARLY MENTIONED, IT APPEARS THIS PROPOSAL IF IMPLIMENTED WOULD INCLUDE THE AUTHORITY TO CLOSE OR RESTRICT THE USE OF ROADS, CAMPGROUNDS, TRAILS, BEACHES, ETC., AT THE WHIM OF THOSE CHARGED WITH SALMONOID RECOVERY.

THE STATEMENT THAT ECONOMIC IMPACT IS INCALCULABLE IS NOT AN ACCEPTABLE OR CANDID CONCLUSION. BY USE OF OFTEN SITED FOREST SERVICE ECONOMIC MODELING NUMBERS, 1 MM BOARDFEET OF TIMBER HARVEST REPRESENTS TEN (10) DIRECT JOBS AND TWENTY (20) INDIRECTLY RELATED JOBS. A FEW SIMPLE CALCULATIONS REVEAL THAT THE IMPACT TO THE STATE INCOME AND SALES TAX COULD EXCEED $1,000,.000 PER YEAR. THE LOSS OF 50 MM OF STUMPAGE PAYMENT TO COUNTY HIGHWAY DISTRICT AND SCHOOL REIMBURSEMENT CAN CONSERVATIVELY BE CALCULATED AT CURRENT VALUE TO BE IN ACCESS OF $6,000,000. (500)(50)(1000)(.25) = 6,250,000 THESE LOSSES DO NOT INCLUDE THE IMPACT OF INCREASED HARVEST COST ON THE REMAINING FOREST CREATED BY THIS PROPOSAL OR LOSS OF PRIVATE LAND VALUE THAT REDUCES ADVALORUM REVENUES TO LOCAL TAXING DISTRICTS. DISREGARDING THE IMPACT TO THE LOCAL BUSINESS COMMUNITIES WHICH WOULD NO DOUBT EXCEED THE ESTIMATED LOSS TO STATE AND LOCAL GOVERNMENT BY NO LESS THAN THREE-FOLD. THE IMPACT OF LOST FEDERAL TAX REVENUE IS ALSO OMITTED WHICH WOULD FAR EXCEED THE LOSS TO STATE AND LOCAL UNITS OF GOVERNMENT, NOT INCUDING REGIONAL AND COMMUNITY COMMERCE IMPACTS. WHEN MILLIONS OF DOLLARS ARE AT STAKE FROM A SINGLE FOREST AND THE E.A. CLAIMS INSIGNIFICANCE IT TENDS TO INCREASE ONES SKEPTICISM OF ALL OTHER CRITERIA CONTAINED UNDER THE SAME COVER.

APPROXIMATELY 50% OF THE SCIENTIFIC REFERENCES LISTED IN APPENDIX A-1-13 ARE FOR COASTAL OR DISTANT REGIONS. OF THOSE REMAINING, VERY LITTLE STUDY APPEARS TO BE SPECIFIC TO IDAHO RIVERS AND PARTICULARLY TO THE UPPER CLEARWATER. IT SEEMS INCREDIBLE WHEN 90% OF THE IMPACT IS IN NORTH CENTRAL IDAHO THAT THE RESEARCH BY THE UNIVRSITY OF IDAHO, IDAHO DEPARTMENT OF LANDS OR THE IDAHO FISH AND GAME WERE NOT AN INTEGRAL PART OF THIS ASSESSMENT. FURTHER, APPENDIX E, PAGE ONE LISTS NO ONE REPRESENTING THE STATE OF IDAHO OR ITS VERY CAPABLE RESEARCH FACILITIES THAT WERE INCLUDED IN THE BRIEFINGS.

AGAIN, ON PAGE E-2, IDAHO CATTLEMEN AND COMPANIES WITH MAJOR LAND BASE IN THE MOST IMPACTED AREAS CONTAINED IN THIS PROPOSAL WERE OMITTED FROM CONSULTATION. SOME OF THESE ORGANIZATIONS HAVE THREE DIMENSIONAL MAPPING CAPABILITIES THAT ARE STATE OF THE ART, AND NOT AT THE REGULAR DISPOSAL OF THOSE WHO WILL BE POLICING LIMITATIONS CONTAINED IN THIS PROPOSAL.

ONE TENDS TO ASSUME THESE OMISSIONS WERE AN OVERSITE BUT CERTAINLY THIS GIVES RISE TO CONCERNS WHEN OTHER METHODS OF RIPARIAN AND WATER QUALITY PROTECTION THAT HAVE BEEN IMPLEMENTED AND ARE AS YET NOT SIGNIFICANTLY PROVEN INADEQUATE, WERE NOT INCLUDED IN THE RESEARCH THAT IMPLEMENTED AUTHORING OF THIS PROPOSAL.

TO DATE THE SALMON RECOVERY PROBLEM PRIMARILY APPEARS NOT TO BE UNAVAILABILITY OF ACCEPTABLE SPAWNING HABITAT IN IDAHO, BUT, PER MY INQUIRIES, A PROBLEM OF RETURNING ONLY ENOUGH ADULTS TO UTILIZE LESS THAN 5% OF THESE AVAILABLE SPAWNING BEDS IN IDAHO. THEREFORE THIS RESTRICTIVE PROPOSAL APPEARS PREMATURE.
AT THIS POINT, I QUESTION WHETHER THE SCIENCE THAT IS THE BASIS FOR PACFISH HAS HAD ADEQUATE PEER REVIEW AND SCIENTIFIC ACCEPTABILITY TO IMPLIMENT IMPACTS OF THE MAGNITUDE PROPOSED. PARTICULARLY WHEN THOSE WHO HAVE THE MOST AT RISK WERE EXCLUDED FROM CONSULTATION AND IMPACTS AS CRITICAL AS UNCONTROLLED WILD FIR[illegible]N TOTALLY UNADDRESSED. CLEARLY VERY LITTLE, IF ANY, CONSI[illegible]ION WAS GIVEN TO ECONOMIC IMPACTS WHEN IT IS COMMON KNOWLEDGE THE FEDERAL AGENCIES HAVE NUMEROUS MODELS TO MAKE AN ANALYSIS OF THIS TYPE AT THEIR DISPOSAL.

I BELIEVE RIPARIAN PROTECTION AND WATER QUALITY ARE IMPORTANT TO SUSTAINING ALL SPECIES OF SALMONOID BUT I AM FAR FROM CONVINCED THIS VEHICLE THROUGH UNJUSTIFIABLE EXCESSIVE RESTRICTION PROVIDES VERY LITTLE MORE THAN A MINOR POSITIVE IMPACT ON SALMONOID RETENTION AND RECOVERY AND A MAJOR NEGATIVE IMPACT ON AFFECTED ECONOMIES.

I THEREFORE BELIEVE THE FINDINGS OF NO SIGNIFICANT IMPACT TO BE WITHOUT JUSTIFICATION AND I BELIEVE THAT A THOROUGHLY DEVELOPED ENVIRONMENTAL IMPACT STATEMENT THAT ADDRESSES THE ADEQUACY AND CREDIBILITY OF THE INVOLVED SCENIC, RECREATIONAL AND ECONOMIC IMPACT SPECIFIC TO THE AFFECTED COMMUNITES IS FULLY JUSTIFIED. THEREFORE, I REQUEST IMMEDIATE ACTION ON PRODUCING AN E.I.S WHICH CANDIDLY AND THOROUGHLY ADDRESSES THE TOTAL ISSUE, AND IMPLEMENTATION OF THE CURRENT PROPOSAL BE RESTRAINED UNTIL THE PROFESSIONAL CRITERIA TO MAKE INFORMED CONCLUSIONS IS AVAILABLE.

IT IS MY BELIEF THIS IS FULLY JUSTIFIABLE UNDER THE EXISTING CIRCUMSTANCES AND ARTICLE 7 OF THE ENDANGERED SPECIES ACT.

[illegible]ARLES D. CUDDY
[illegible]TE REPRESENTATIVE, DIST 7

STATEMENT PREPARED FOR WATER AND POWER RESOURCES
SUBCOMMITTEE OF HOUSE COMMITTEE ON RESOURCES

FRED KELLY GRANT
OWYHEE COUNTY LAND USE PLANNING COMMITTEE
OWYHEE COUNTY, IDAHO

OCTOBER 5, 1995

SUBCOMMITTEE HEARING IN BOISE, IDAHO

IMPORTANCE OF WATER IN THE WEST

"Water is the lifeblood of the land." The expression has been so often used that it has become almost trite; so often used that authors Coggins, Wilkinson and Leshy have felt compelled to add to the expression to make it read "Water is TRULY the lifeblood of the land." (Federal Public Land and Resources Law, Foundation Press, 3d Ed., p. 363)

The history of our nation focuses on the importance of water and bodies of water to development and growth. Military forts have been strategically placed at harbors, on lakeside sites, on overlooks above river banks, and at the confluence of merging streams; mills and factories have been erected near water supplies; towns and cities have been founded and have grown where water supply is plentiful. Battles have been waged over access to water---military battles and legal battles.

But nowhere is water more critical than in the Western United States, that western frontier early and often referred to as The Great American Desert by easterners such as Daniel Webster who once proclaimed in Congress that "I will not vote one cent from the treasury to bring the Atlantic one inch closer to the Pacific than it already is."
Only those who live and work in the western states realize just how critical to survival is access to water supply. I was not raised on a farm or ranch; during my youth I paid little attention to the arid nature of southwestern Idaho. After graduation from college, my wife and I spent four years in Chicago where I attended the University of Chicago School of Law. Living on the shores of Lake Michigan, and experiencing the plentiful rain AND SNOW of the Chicago area, we knew little of water shortage. We then spent the next decade in Baltimore, Maryland where shortage of water was rarely a topic of conversation. Only after returning to Idaho as adults did we become aware of the impact which water, and lack of water, has on the environment, the land and its people. Two very close friends, the Godparents of our sons, Frances and Margaret Winchester, moved from Baltimore to Idaho upon their retirement. They were amazed to observe flood irrigation of lawns and gardens, a process unknown and unnecessary in Maryland. They never tired of telling their friends in Maryland of their weekly need to irrigate in order to sustain plant life. When I worked in the administration of Governor John Evans I learned of the severe political and economic impact which results in this arid land during and after a period of drought. During that time, the Governor's staff devised a plan to seed clouds in the north of Idaho in order to induce rainfall. The plan brought forth formidable opposition from the late Dixie Lee Ray who was then Governor of Washington. I well remember her salty remarks threatening lawsuits and other retaliation during a conference call which ended the cloud seeding plan. My experiences in that office opened my eyes to the critical importance of ample water to life in these states. With sufficient water, this is a land of vitality. Without water, it is a land without life. To paraphrase Coggins, Wilkinson and Leshy, "TRULY, Water is the lifeblood of the west."

Owyhee County's historian in residence, Michael F. Hanley, who is currently serving as the President of the Owyhee Cattleman's Association, has well stated the importance of water, our most vital resource:

"When mass immigration began across the plains, over the mountains and deserts, diarists recorded hardships in arid reaches where alkali, dust and sand tortured them. They were going to various promised lands, some for adventure, but the majority for the opportunity to better themselves.

. . .

"The...right of prior appropriation, or the first in use is first in right, was [established] and maintained as the cornerstone of individual and States rights.

"Western citizens appropriated water and filed on it for various purposes including mining, milling, agriculture and domestic uses. There were of course problems, but the states worked through most of them in an orderly manner, with emphasis always on priority usage. So successful was the system that land considered worthless by immigrants and California 49'ers

was transformed into productive farms and ranches. Pioneers who lived through this part of our history marveled at the changes they saw resulting from the appropriation of water."

PRIOR APPROPRIATION DOCTRINE

The principle of "First in use, first in right" became firmly established by practice in the California gold fields in the mid-1800's, and then in the settlements which developed to support the gold fields. The principle spread with settlement of the west. Ultimately the courts were called upon to validate the principle, and in Eddy v. Simpson, 3 Cal. 249 (l853) and Irwin v. Phillips, 5 Cal. 140 (1855) the California Supreme Court clearly established the prior appropriation doctrine, i.e., prior possession of water on the public land gives the exclusive right to its use.

Even as the prior appropriation doctrine settled disputes between individual water users, there was a widely held belief that the rule did not apply to the Federal Government as the owner of the so-called public lands. So, it was believed that a patent holder or other grantee of the Federal Government could dispossess a miner or settler of their prior held water right. Some court decisions so ruled. Van Sickle v. Haines, 7 Nev. 249 (1872) and Union Mill and Mining Co. v. Ferris, 2 Saw. 176, 24 Fed. Cas. 594 (C.C. Nev. 1872). This belief may have directly lead to the enactment by Congress of the Act of 1866 which provided the pivotal turning point for development of western water law.

The Act of 1866 was a mining law, but it contained a provision which critically impacted all water claims held by miners and all other settlers of the public lands:

"That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid, is hereby acknowledged and confirmed..."

The United States Supreme Court later stated that the purpose of this provision of the Act of 1866 was to "give the sanction of the United States, the proprietor of the lands, to possessory rights, which had previously rested solely upon the local customs, laws and decisions of the courts, and to prevent such rights from being lost on a sale of the lands." Jennison v. Kirk, 98 U.S. 453 (1879) In other words, the Congress did not CREATE possessory water rights in the Act of 1866; rather, the Congress ACKNOWLEDGED the existence of such possessory water rights which arose from local customs, laws and decisions of the courts, and extended protection to such rights.

Four years later, in the Act of 1870, Congress reaffirmed the mandate that occupants of public land would be bound by state and local water laws when it provided that "all patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights."

In California, Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142 (1935), the United States Supreme Court re-affirmed the Court's prior statement that the acts of 1866 and 1870 DID NOT CREATE possessory water rights, but rather ACKNOWLEDGED the existence of such rights and extended protection to them as accrued and in the future. The Court stated: "They [the Acts of 1866 and 1870] reach into the future as well, and approve and confirm the policy of appropriation for a beneficial use, as recognized by local rules and customs, and the legislation and judicial decisions of the arid-land states, as the test and measure of private rights in and to the non-navigable waters on the public domain."

In so interpreting the Acts of 1866 and 1870 as ACKNOWLEDGEMENTS OF ALREADY EXISTING POSSESSORY WATER RIGHTS WHICH AROSE FROM LOCAL RULES AND CUSTOMS, the Court explained the history of the west which lead to passage of the Acts:

"For the light which it will reflect upon the meaning and scope of [the acknowledgement of water rights provision] and its bearing upon the present question, it is well to pause at this point to consider the then-existing situation with respect to land and water rights in the states and territories named. These states and territories comprise the western third of the United States--a vast empire in extent, but still sparsely settled. From a line east of the Rocky Mountains almost to the Pacific Ocean, and from the Canadian border to the original thirteen states--the lands capable of redemption, in the main, constituted a desert, impossible of agricultural use without artificial irrigation.

"In the beginning, the task of reclaiming this area was left to the unaided efforts of the people who found their way by painful effort to its inhospitable solitudes. These western pioneers, emulating the spirit of so many others who had gone before them in similar ventures, faced the difficult problem of wresting a living and creating homes from the raw elements about them, and threw down the gage of battle to the forces of nature. With imperfect tools, they built dams, excavated canals, constructed ditches, plowed and cultivated the soil, and transformed dry and desolate lands into green fields and leafy orchards. In the success of that effort, the general government itself was greatly concerned--not only because, as owner, it was charged through Congress with the duty of disposing of the lands, but because the settlement and development of the country in which the lands lay was highly desirable."

So, Congress sanctioned the controlling exercise of state sovereignty over water rights on the public lands, such sovereignty being implemented by local rules, customs and court decisions. The base of such sovereignty stems not only from such Congressional sanction. It lies also on the constitutional principle of "equal footing" of the states upon their admission into the Union. When the western states were admitted into the Union, they were admitted on an "equal footing" with the first thirteen states. Such admission brought with it the inherent power to exert authority over their waters and the underlying beds. Oregon v. Corvallis Land and Gravel Co., 429 U.S. 363 (1977) and Montana v. United States, 450 U.S. 544 (1981). In United States v. New Mexico, 438 U.S. 696 (1978) the Court referred to the powers which the states had acquired over their waters as a result of congressional action "and admission into the Union."

In California v. United States, 438 U.S. 645 (1978), the Court again recognized that in the early Acts of 1866 and 1870 the Congress had ACKNOWLEDGED the already existing water rights:

"...the doctrine of prior appropriation, linked to beneficial use of the water, arose through the local customs, laws, and judicial decisions. Even in this early stage of the development of Western water law, before many of the Western States had been admitted to the Union, Congress deferred to the growing local law. Thus, in Broder v. Water Co., 101 U.S. 274 (1879), the Court observed that local appropriation rights were 'rights' which the government had, by its conduct recognized and encouraged and was bound to protect.'"

Moreover, the Court pointed out that the states have total authority over their internal waters except where federal navigable waters are involved or "reserved rights" are involved.

THE FEDERAL RESERVED RIGHTS DOCTINE

The "reserved rights" doctrine emerged in the case of United States v. Rio Grande Dam and Irrigation Co., 174 U.S. 690 (1899). In that case the federal government sued to stop and

prevent construction of a private dam across the Rio Grande River in the New Mexico Territory. The lower federal court dismissed the lawsuit, but the United States Supreme Court reversed that decision, setting forth the two exceptions to state sovereignty over water rights:

"[Y]et two limitations must be recognized: First, that, in the absence of specific authority from Congress, a state cannot by its legislation destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters; so far at least as may be necessary for the beneficial uses of the government property. Second, that it is limited by the superior power of the General Government to secure the uninterrupted navigability of all navigable streams within the limits of the United States."

Thus, was judicially born the "reserved rights" doctrine which allows the federal government to retain the right to use so much of the water on public lands as necessary for the beneficial uses of the public lands. In Winters v. United States, 207 U.S. 564 (1908) the Court held that the creation of an Indian reservation by the United States Government not only set aside land for the reservation but, by implication, reserved a sufficient amount of water to fulfill the purposes of the Indian reservation. The critical date for attachment of the water right was the date the Indian reservation was created. Thus, the federal government had superior water rights to any claimant whose appropriation date was later than the date of creation of the Indian reservation.

In Arizona v. California, 373 U.S. 546 (1963), the Winters doctrine was extended to all federal lands which are reserved for a specific purpose. The Court stated that it had "no doubt about the power of the United States...to reserve water rights for its reservations and its property" under the Commerce Clause of the Constitution and Art. IV, Section 3 which empowers the Congress to regulate "government lands".

The limitations placed upon the "reserved right" to water which are critical to the western states are two-fold: the federal government can reserve only UNAPPROPRIATED water, and only to the extent necessary to accomplish the purpose of the government's reservation. In Cappaert v. United States, 426 U.S. 128 (1976), the Court stated:

"This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water THEN UNAPPROPRIATED TO THE EXTENT NEEDED TO ACCOMPLISH THE PURPOSE OF THE RESERVATION. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of the reservation and is superior to the rights of future appropriators."

The Court premised the right of Congress to reserve water rights on the Commerce Clause and the Property Clause, Art. IV, Sec. 3 which permits regulation of federal lands by the Congress. The Court further stated that in determining whether there is a federally reserved water right implicit in a federal reservation of public land, "the issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purposes for which the reservation was created." Finally, the Court limited the "reserved right" power by stating that "The implied-reservation-of-water-rights-doctrine, however, reserves only that amount of water necessary to fulfill the purpose of the reservation, no more."

CONGRESS CONTROLS PARAMETERS OF RESERVED RIGHTS

It should be clear from the structure of the "reserved right" doctrine as set forth by the Supreme Court that the Congress has absolute authority to limit the parameters of exercise of the "reserved right" power as it pertains to uses on the public lands. Recall that the Supreme Court has premised the "reserved right" authority on two clauses of the Constitution: the Commerce Clause and the Property Clause. The Commerce Clause is Article I, Section 8,

subsection 3 which provides that the Congress shall have power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." It is this clause which allows Congress to reserve water rights necessary to the navigable streams. The Property Clause is Article IV, Section 3 which empowers only the Congress to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States". Since the Constitutional base for "reserved rights" empowers only the Congress, it follows as night follows day that the Congress has absolute power to control the parameters of the reservation of water rights. It can prevent the Executive Department of government from reserving lands, and impliedly reserving water for uses on those lands, because the power to regulate is constitutionally committed to the Congress. The Executive can reserve water rights only when authorized by the Congress to do so. That limitation on Executive power is clear from the decision in United States v. New Mexico, 438 U.S. 696 (1978). In that case, the state of New Mexico initiated in the state courts an adjudication of water rights on the Rio Mimbres. The federal government claimed reserved water rights for use in the Gila National Forest. The courts of New Mexico held that the federal government had no reserved right to an instream flow on the national forest for "aesthetic, environmental, recreational, or 'fish' purposes", and further held that no water had been reserved for stockwatering on the national forest. The United States Supreme Court affirmed the state court decisions and held that the Congress had not reserved water rights for the uses espoused by the Forest Service. The Court made the following observations which demonstrate the power of Congress to control the parameters of the "reserved right" to water use:

"The Court has previously concluded that Congress, in giving the President the power to reserve portions of the federal domain for specific federal purposes, IMPLIEDLY authorized him to reserve 'appurtenant water then unappropriated TO THE EXTENT NEEDED TO ACCOMPLISH THE PURPOSE OF THE RESERVATION.'. . .[However] the Court has repeatedly emphasized that Congress reserved 'only that amount of water necessary to fulfill the purpose of the reservation, no more.' . . . Each time this Court has applied the 'implied-reservation-of-water doctrine,' it has carefully examined both the asserted water right and the specific purposes for which the land was reserved, and concluded that without the water the purposes of the reservation would be entirely defeated.

"This careful examination is required both because the reservation is implied, rather than expressed, and because of the history of congressional intent in the field of federal-state jurisdiction with respect to allocation of water. Where Congress has expressly addressed the question of whether federal entities must abide by state water law, it has almost invariably deferred to state law.. . .Where water is necessary to fulfill the very purposes for which a federal reservation was created, it is reasonable to conclude, even in the face of Congress' express deference to state water law in other areas, that the United States intended to reserve the necessary water. Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator."

The Court further explained that its careful scrutiny of every claim to a reserved right by the federal government was necessary because of the arid nature of the western states:

"In the arid parts of the West, however, claims to water for use on federal reservations inescapably vie with other public and private claims for the limited quantities to be found in the rivers and streams. This competition is compounded by the sheer quantity of reserved lands in the Western States, which lands form brightly colored swaths across the maps of these States."

The Court then carefully examined the acts of Congress relating to the national forest and held that the Congress had not reserved the right to appropriate water for the uses proposed by the Forest Service. With regard to the claim for stockwatering, the Court stated as follows:

"The United States issues permits to private cattle owners to graze their stock on the Gila National Forest and provides for stockwatering at various locations along the Rio Mimbres. The

United States contends that, since Congress clearly foresaw stockwatering on national forests, reserved rights must be recognized for this purpose. The New Mexico courts disagreed and held that any stockwatering rights must be allocated under state law to individual stockwaterers. We agree."

So, while it is clear that the Congress has allowed for reserving those water rights which are necessary for the primary purpose of the national forests, the Court has held that the Congress has not reserved rights for secondary purposes of the forests such as stock-grazing, environmental purposes and recreation.

As to the BLM, operating under the Department of Interior, it is not clear that Congress has reserved water rights. In Sierra Club v. Watt, 659 F. 2d 203 (D.C.Cir. 1981) the federal court of appeals for the District of Columbia stated that no reserved rights attach to the lands managed by the BLM under FLPMA. The Court found that Congress stated no intention of reserving water rights in the provisions of the Act. The BLM has attempted to stake "reserved right" claims on a 1926 Executive Order that reserved lands around every "spring or waterhole" on public lands. The basis of that Executive Order is highly questionable under the holding in United States v. New Mexico and under the "reserved right" doctrine as carefully restricted by the Supreme Court.

Congress should carefully review the activities of both the Forest Service and the BLM in seeking establishment of water rights in the Snake River Adjudication now pending in Idaho. It appears clear to us that both agencies are pursuing claims which have not been authorized by the Congress. They are pursuing claims based on a reserved right theory, when it appears clear that the Congress has authorized no such reserved rights for uses such as "stock watering", for example. They pursue these rights in a state court, knowing that the rights have not been favored by the United States Supreme Court decisions. We call upon the Congress, through its oversight power, to restrict the attempt being made by the federal agencies to usurp water rights in Idaho.

FEDERAL AGENTS PURSUE WATER RIGHTS THROUGH INTIMIDATION AND USE OF SUPERIOR FISCAL RESOURCES

When the Forest Service and the BLM seek to establish water rights in Idaho, it is clear from the Supreme Court decisions cited that the claims should be pursued "in the same manner as any other public or private appropriator" would pursue the claims. But that is not the case. These federal agencies take advantage of the unlimited fiscal resources of the federal government and the awesome power of the federal government to outspend, harass and intimidate private claimants. We urge the Congress to call the agencies to task for these tactics, and to carefully spell out to the agencies what the Congressional intent is as to water rights in Idaho. How have the agencies taken inequitable advantage of private appropriators? Let us count the ways.

First, the federal government has filed thousands of claims in the Snake River Basin Adjudication without paying a single filing fee. Every private appropriator of water must pay a filing fee, but the federal government claimed exemption and the United States Supreme Court affirmed the exemption claim. The federal agencies have filed an estimated 50,000 claims in the Adjudication, but have escaped paying the estimated $11 million dollars in filing fees which should accompany the claims. This means that every private appropriator must pay a filing fee for each of his own claims, and must also share, as a taxpayer, in paying the cost of adjudicating the federal government's claim which is adverse to his own interests. Moreover, the private appropriator, as a taxpayer, is sharing the cost of the entire adjudication which is funded by state tax dollars, while the federal government as claimant pays none of the cost. Additionally, the private appropriator, as a federal taxpayer, shares the cost of the research, preparation and presentation of the federal claims, even those which are directly adverse to his own interests.

Finally, the private appropriator, as a federal taxpayer, shares the cost of the federal attorneys who appear adversely to his own interest. If, in fact, he is represented by counsel, he is paying for his own counsel and for adversary counsel. So, the federal agencies are not pursuing these claims in the same manner as other public and private appropriators. The Congress can change this. The Congress can either authorize payment of the federal agencies fair share in the cost of adjudication, or direct the agencies to cease and desist in their pursuit of water rights. The Congress has the authority to take the necessary action to protect the private appropriators from the fiscal unevenness of the present procedure.

Second, the agencies have used the fiscal unevenness to harass and intimidate private appropriators. An example of this harassment is evidenced in the report just last Friday, September 29, 1995 that the Forest Service was withdrawing some 3600 claims in which the Service claimed the right to maintain a minimum flow in streams to preserve fisheries, wildlife, water quality and wilderness management. The withdrawal came just days before the due date for responses and objections to the claims. The withdrawal also came after the state of Idaho had prepared hundreds of responses, at a cost to the taxpayers of hundreds of thousands of dollars. Deputy Idaho Attorney General Clive Strong, the chief of the natural resources division in the Idaho Attorney General's office, stated that the late withdrawal meant that the federal government had "just wasted our time and money, a tremendous waste of time and money by not making this decision sooner." He added the sentiment which we all have as to the federal attempts to claim Idaho water:
"This is an example of the federal government running amok." Mike Collette of the Forest Service office in Ogden, Utah, pointed out that the Forest Service still intended to pursue some 70 claims and that the Service "feel[s] they are legally and ethically defensible." What about the 3600 which were withdrawn just days before the deadline for response, at a time when the federal agency had to know that the state had already spent enormous amounts of time responding? Were they not "legally and ethically defensible"? Collette stated that the withdrawal was an "important, positive step to settle this process and we're not going to apologize for that." "We don't seek an apology. We seek an explanation for the agency's failure to take a "positive step to settle" the process prior to requiring the state, and many private appropriators to respond to claims which the agency knew it would withdraw at the last minute. We also seek payment by the federal agency of its fair share of the Adjudication process, just as must be paid by any other appropriator.

Last year I told the members of the Owyhee County Land Use Planning Committee to expect withdrawals of many of the federal claims. I predicted at that time that the federal agencies would stick with their claims as long as possible, causing private appropriators to use up their funds in preparing responses and objections, then withdraw their claims in hopes of re-asserting their their claims in the future on the theory that their claims were not actually adjudicated. My prediction was based upon my experiences through the years in observing federal harassment designed to overpower individual citizens in asserting legal rights. We now ask that this subcommittee inquire into the deliberateness of the federal action in running up the cost of adjudication, and to initiate action in the Congress to require payment by the federal agencies of their fair share in the Adjudication process. In the alternative, we ask this subcommittee to direct a cessation of the federal agency attempt to assert these water claims.

On August 9, 1993, I attended a meeting arranged by the BLM and the Department of Justice at which I witnessed an attempt by federal representatives to intimidate Owyhee County grazing permittees into settling water claims in favor of the federal government. The meeting was held in Marsing, and was attended by several claimants who have filed claims to water rights in Basin 57 which is located in northwestern Owyhee County and makes up approximately 10 percent of the County. In this small Basin, the federal government has filed so many claims of "reserved rights" that they fill a 1 inch thick binder, and many of the claim forms contain more than one claim. For this small Basin alone, there are two 3 inch thick books of claims, nearly half of them filed by the BLM. The individual claimants who attended the August, 1993 are required to file objections to the adverse claims filed by the BLM. At the meeting, the Department of Justice

lawyer participating in the Adjudication and BLM officials presented the government's "suggestions" that the permittees settle their claims and objections by agreeing that their water rights be placed in the name of the BLM. In exchange, the federal agents magnanimously agreed to allow "Remarks" as to the water right to indicate that the use for the water was stockwatering with regard to a particular allotment. The offer to settle was put to the permittees as an offer to allow them to avoid long, costly litigation over their rights. A BLM agent pointed out that some 36,000 claims had been filed for the federal government in the Adjudication and that the filing "didn't cost us anything." This was not a meeting planned for discussion of "settlement". It was a meeting designed to convince the permittees that they had no chance against the superior resources of the federal government. A permittee asked the Justice lawyer what the government proposed to do about the objections which they had filed to irrigation water rights STRICTLY ON PRIVATE LAND. She responded that "There are specific issues for those objections AND THERE WILL BE NO NEGOTIATIONS." A representative of the Idaho Water Resources Department who attended the meeting pointed out that there were no specific issues as to the private land rights, and he begged to differ with her legal position as to such rights. It was made clear to the permittees by the federal agents in attendance that they must give up their water rights, even when the right pertained to water STRICTLY ON PRIVATE LAND, in order to avoid the severe cost involved in resisting the take-over of the rights by the government.

During my thirty-five years of experience working in every level of government, federal-state-and local, I have experienced intimidation. For many years I served in a United States Attorney's office and then as a state prosecutor in the Baltimore State's Attorney's office. I know intimidation when I see it. I saw it clearly in that meeting. The federal representatives who attended the meeting had no intention of discussing settlement, or negotiating settlement. Their intention was to convince the permittees that the federal government had unlimited resources, fiscal and otherwise, and had nothing to lose by litigating each claim---even private ground claims---to the bitter end. Their intention was to convince the permittees that the government could break them financially through the litigation. Their purpose was evident: if they could get these permittees in Owyhee County, a stronghold of private property rights, to settle, the precedent throughout the Basins would be set. But they underestimated the personal commitment of these Owyhee Countians to the private property concepts which have made this nation strong from its beginnings----concepts which too often are now pressed more strongly in the western states than elsewhere in the nation.
Resistance to the government's in-roads on private water rights remains firm. In the spirit of protecting these private property rights, we request that this subcommittee inquire into the reasons why the federal agencies are pursuing water rights which clearly involve only private property. Again, we request that the subcommittee initiate action to require that the federal government either pay its fair share of the Adjudication or withdraw all its claims.

Further example of the federal insistence on pursuing water rights linked solely to private land exists in Owyhee County. A family corporation, the 7-High corporation whose operations are carried out by Jerry Hoagland, past president of the Owyhee Cattleman's Association, and his family, has two water rights in Basin 57, on Reynolds Creek. They have priority dates of 1864 and 1865. They were decreed by a court in 1911 and again in 1987. These claims involve water which originates on private ground, is diverted on private ground for irrigation and never crosses federally managed land at all. Yet, the BLM has objected to these claims--claims based on over 130 years of continuous appropriation on PRIVATE LAND. So, these private appropriators are forced to extra cost to re-litigate what has already been decreed to be theirs. There are at least two other permittees in Owyhee County who have water rights dating to 1864, decreed in 1911, involving water arising and remaining on private ground who face litigation costs because the BLM has filed objections to these rights. The Justice Department claims that the prior decrees are not binding on the federal government because it was not party to those adjudications. Does that provide the clear rationale for the late withdrawals of the Forest Service claims? Withdraw now, in order to re-file and re-harass later.

Many of the permittees who attended the meeting

in Marsing have retained the services of Richard Simms, an attorney with 23 years of experience in litigating water cases. During those years he opposed the federal government in many major cases including United States v. New Mexico, cited above. He defeated the federal government in each of those cases. Mr. Simms came to Idaho, having decided to retire from active litigation and accept a position as Special Master for the Snake River Basin Adjudication. The United States filed an objection to his appointment, and filed a 120 page motion and brief alleging bias against the federal government. The motion outlined the many cases litigated by Mr. Simms against the federal government. Mr. Simms responded to the motion with a 50 page brief in which he pointed out that it must have been the courts who had bias, since it was the courts who decided against the government's position in the cases in which he was successful counsel. Then, after filing his successful response, he resigned the position of Special Master. As he explained, his remaining in the position would just have given the government an issue to argue in attempting to prolong the litigation. Besides, the government's frivolous position gave him added incentive to litigate once more against their attempts to usurp private water rights.

The federal efforts to take over private water rights are just consistent with Secretary Babbitt's blatant attempt to take such rights through the provisions of Rangeland Reform '94. Those regulations which went into effect on August 21, 1995, and the current litigation strategy in the Adjudication are designed to circumvent the holdings of the United States Supreme Court which have restricted the "reserved rights" doctrine. Secretary Babbitt, and all federal agencies know and rely upon the truth of the axiom that, as put by Michael Hanley, "those who control the water also control the people." Again, in the words of Mr. Hanley, "Today as in our pioneer past water is the life blood of the west and that is why ever mounting assaults of States control of it by the Federal Government concerns Westerners. It is nothing more than a private property and states rights issue with overtones of our forbearers' gripe with Mother England."

The people of Owyhee County have continually shown their willingness to sacrifice financially and politically in order to stand tall in defense of their private property rights. Now, they turn to this subcommittee for assistance in stemming the federal assault on private water rights. They ask that you specifically inquire of the Forest Service, the BLM, and the Department of Justice as to their activities in pursuing water claims foreclosed to them by the United States Supreme Court decisions as to the "reserve right" doctrine, and particularly in pursuing claims to water which originates on, is diverted on, and entirely appropriated on private land. We ask that you direct that the federal agencies either pay their fair share of the Adjudication or withdraw all their claims and objections. We appreciate the efforts of the Congress to protect private property rights. On the watch of this Administration, the Congress is the only source of constitutional protection short of fiscally debilitating litigation.

Fred Kelly Grant, Ltd.

Consulting Services in Legal Research, Personnel, Planning

SUPPLEMENT TO STATEMENT PREPARED FOR SUBCOMMITTEE ON WATER AND POWER OF HOUSE COMMITTEE ON RESOURCES

STATEMENT PRESENTED BY: FRED KELLY GRANT
OWYHEE COUNTY LAND USE PLANNING COMMITTEE

249 Smith Avenue
Nampa, Idaho 83651

(208) 465-7724
(208) 459-1588

Topical Outline:

I. The importance of water in the west

II. Development and parameters of Prior Appropriation of Water Doctrine

III. Development of the federal "Reserved Right" doctrine

IV. Congressional Control over parameters of "Reserved Right" Doctrine

V. Intimidation of water rights by federal agencies.

P.O. Box 432 • Nampa, Idaho 83653 • (208) 465-5412

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON WATER AND POWER

Field Hearing
October 5, 1995
Boise City Hall
Boise, Idaho

Testimony of Scott L. Campbell
Elam & Burke, P.A.
702 W. Idaho, P.O. Box 1539
Boise, Idaho 83701
(208) 343-5454

Chairman Doolittle and Members of the Subcommittee, it is an honor and a pleasure to have the opportunity to testify before your Subcommittee on issues of critical importance to my clients and also the citizens of Idaho and the western United States. My name is Scott Campbell. I am an attorney with the Boise law firm of Elam & Burke. My primary area of practice is water law and environmental litigation. I represent a number of irrigation districts, canal companies, farms and ranches, as well as municipal and industrial users of water in the State of Idaho.

I believe it was U.S. Senator Larry Craig who coined the phrase "War on the West" to describe the extreme environmental policies of the Clinton administration and their impact upon the traditional western rural natural resource industries of mining, ranching, irrigated agriculture, and timber harvest. While some people initially may have considered his description to be an overstatement, I believe that he was prophetic in his assessment of the situation.

Since the focus of my law practice involves water resource issues, I will address the recent battles in the "War on the West" on that front. I have been involved in water resource matters, dealing primarily with the legal problems of irrigation districts and canal companies, since 1985. Likewise, I have assisted these entities in understanding and developing responses to the actions of the U.S. Bureau of Reclamation over the same time period. I have observed, particularly over the last two and one-half years, the total redirection of the Bureau in its dealings with irrigation entities.

From an historical perspective, the Bureau of Reclamation was created by Congress, pursuant to the Reclamation Act of 1902, to develop the arid West with vibrant communities, producing economic benefits to the states and the nation through the raising of agricultural products for sale and consumption. Congress enacted the 1902 Act in response to a huge public demand for federal assistance in the development of water projects which could open vast tracks of fertile western soil for agricultural development, and with it, the formation of new communities of pioneering men and women, who carved a living out of the desert wasteland and made homes where rocks and rattlesnakes preceded them.

Today, the reclamation states provide billions of dollars worth of foodstuffs, forage crops, and seeds for use in this country, as well as for export around the world. The Bureau of Reclamation has been wildly successful in carrying out its initial charge, as contemplated by Congress in the enactment of the 1902 Act.

Unfortunately, the Bureau has veered off course. Instead of a positive, helpful government agency, providing assistance to the private sector, the Bureau has become a "Trojan Horse" for the environmental activism of the Clinton administration. Commencing soon after the new administration took office, the Bureau began a number of major actions, all having adverse economic and emotional impacts upon irrigated agriculture.

Water Spreading Rule-making

In 1994, the Bureau of Reclamation undertook a rule-making proposal to impose water spreading regulations upon irrigation entities throughout the western United States. With little or no prior notice to the potentially impacted irrigation community, the Bureau attempted to ramrod through a major initiative to "correct" water spreading in federal reclamation projects which the Bureau had previously accepted and in some cases encouraged. Only by virtue of a coordinated, concentrated effort by the National Water Resources Association did the Bureau temporarily retreat from its aggressive, environmentally driven proposal. The proposal may soon resurface.

Acreage Limitation and Water Conservation Rule-making

In late March and early April of 1995, the Bureau went public with a massive Environmental Impact Statement and proposed regulations imposing new acreage limitations and water conservation plan requirements upon virtually all entities receiving any water from Bureau of Reclamation facilities. These proposed regulations, particularly the water conservation plan requirements, are a dramatic departure from prior Bureau policy. Under these regulations, the Bureau will become a new "federal water police," forcing western state irrigation entities to expend hundreds of millions of dollars to install individual measuring devices and recording equipment for each farm receiving irrigation water. Also, the regulations require the affected entities to prepare environmental impact statements (a federal agency responsibility) to evaluate the impact of implementing the extensive water conservation requirements of the regulations. The regulations will force the implementation of extensive capital improvements for "water conservation" to further the Bureau's ultimate goal of utilizing more irrigation reservoir storage water for "environmental" purposes.

Bureau of Reclamation Applications to Change the Nature of Use of 5.2 Million Acre-Feet of Water in Idaho

On May 15, 1995, the Bureau, through John W. Keys III, the Northwest Regional Director, submitted to the Idaho Department of Water Resources 16 applications to change the nature of use of the existing water rights which allow the Bureau to store 5.2 million acre-feet of water in federal reclamation facilities in the State of Idaho. These applications have been presented as part of the Bureau's compliance with the Biological Opinion, issued in March, 1995, by the National Marine Fisheries Service, as part of the Endangered Species Act salmon controversy in the Pacific Northwest. The Bureau claims that it has filed the applications to allow it to provide 427,000 acre-feet of "salmon flow augmentation water" from its facilities in the State of Idaho to "benefit" the migration cycle of the salmon in the Snake River/Columbia River system.

If the Bureau had only done that much, the applications would not have created nearly as much controversy as they have. Instead of changing only 427,000 acre-feet of water under the applicable water rights, the Bureau has indicated its desire to change the total storage capacity

of all of the reservoirs located in the State of Idaho to include in-stream flow uses as a beneficial use under Idaho law. This action is clear evidence of the Bureau's underlying strategy to modify the traditional water use in federal reclamation facilities in Idaho from irrigation and power production to allow future use of all of the stored water for "environmental" purposes. This effort, coupled with the proposed regulations for water conservation plans, clearly indicates that the Bureau intends to continue its aggressive attack upon existing water use and storage contracts with irrigation entities in Idaho and throughout the West.

Reclamation Contract Renewal and Repayment Memorandum

On July 20, 1994, Daniel Beard, Commissioner of Reclamation, issued a general policy memorandum to all of the Regional Directors of the Bureau and to the Directors of the major internal departments of the Bureau. The memorandum set forth a new policy statement concerning contract renewals, amendments, and repayment terms. A copy of the memorandum is attached.

Not surprisingly, the memorandum sets forth a number of concepts which have already taken form in Bureau rule-making and other administrative actions. For example, the memorandum states:

> Contracts will promote improved water management and conservation and require water conservation plans (with implementation schedules) pursuant to the authority of section 210 of the Reclamation Reform Act of 1982 (RRA), as amended.

Contract Renewal Memorandum, para. 4, p. 3.

The introduction of the memorandum provides the clearest insight into the thinking behind the document:

> The Bureau of Reclamation's (Reclamation) past contracting practices have concentrated on defining repayment terms and on providing long-term assurances of water supplies to water users. As a corollary, Reclamation has not historically reserved for itself the flexibility to improve the management of existing projects, shift water supplies to meet growing demands for municipal and environmental uses, or address contemporary resource management needs. This has placed the United States in a disadvantageous position to respond to changing public values.

Contract Renewal Memorandum, p. 1.

It is important to remember that many of the irrigation storage contracts among the irrigation entities throughout the West and the Bureau come up for renewal during the next 10

to 20 years. Many of the Bureau facilities were constructed in the late 1940's and 1950's, and most contracts provide for renewal every forty years. The memorandum is further evidence that the Bureau is positioning itself to terminate existing water use by irrigation entities from Bureau facilities to convert that historic water use from irrigation purposes to environmental and recreational uses. This is part of the Bureau's grand scheme and "New Direction" to serve a wider range of interests, instead of focusing upon its traditional constituency of irrigated agriculture.

In large part, this new direction is internally driven by the Bureau's realization that because large, new reclamation projects will probably not be developed, the current number of Bureau employees is unnecessary unless a new agenda is developed. This internal realization dovetails nicely with the Clinton administration's environmental agenda for the "War on the West." As the Bureau and the current administration well recognize, in the arid West, if you control the water resources, you control the economy, the major land uses, and the lives of the people who rely upon water use for their livelihood. This realization of control ties into the environmental extremism of various national and regional groups, who see no value in use of reservoir storage water except for fish habitat, white-water recreation, and aesthetics. The production of foodstuffs and other agricultural products is irrelevant in their judgment. The economic dislocation which would occur from a dramatic modification of historic irrigation use of the water in those reservoirs is likewise immaterial. To them, the impacts upon individual farmers and their families, potentially including the bankruptcy of farming businesses and the loss of family farms, simply does not matter.

CONCLUSION

In essence, the Bureau of Reclamation's "New Direction" and clear course of action is a deliberate strategy of destruction and dislocation of one of the most productive sectors of our economy--the individual American farmer. I strongly believe this is a national tragedy which Congress should do everything possible to remedy.

21-090 O - 96 - 10

SUPPLEMENTAL SHEET TO STATEMENT

Scott L. Campbell
Elam & Burke, P.A.
702 W. Idaho, P.O. Box 1539
Boise, Idaho 83701
(208) 343-5454

TOPICAL OUTLINE OF STATEMENT:

Introduction 1
Water Spreading Rule-making 2
Acreage Limitation and Water Conservation Rule-making 2
Bureau of Reclamation Applications to Change the Nature
of Use of 5.2 Million Acre-Feet of Water in Idaho 2
Reclamation Contract Renewal and Repayment Memorandum 3
Contract Renewal Memorandum, para. 4, p. 3 3
Contract Renewal Memorandum, p.1 3
Conclusion 4

TO

CC

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

IN REPLY REFER TO:
W-6400

JUL 20 1984

MEMORANDUM

To: Director, Office of Program Analysis
Director, Office of Operations
Director, Office of Policy and External Affairs
Regional Director, PN, MP, LC, UC, GP
Attention: 100, 400

From: Daniel P. Beard
Commissioner

Subject: Contracts and Repayment Policy

Introduction

The Bureau of Reclamation's (Reclamation) past contracting practices have concentrated on defining repayment terms and on providing long-term assurances of water supplies to water users. As a corollary, Reclamation has not historically reserved for itself the flexibility to improve the management of existing projects, shift water supplies to meet growing demands for municipal and environmental uses, or address contemporary resource management needs. This has placed the United States in a disadvantageous position to respond to changing public values.

One of my primary objectives is to ensure that Reclamation's future contracting and repayment policies and procedures are in accord with our goal of being a premier water resources management agency. Flexibility contained in future contracts will be oriented to assist in achieving the Bureau's multiple objectives. Toward this end, we need to revise our policies and procedures to ensure that Reclamation has considerably more flexibility and discretion in the management of the water, land, and power resources associated with our projects than has historically been the case. Detailed guidance for implementing the policies set forth in this memorandum will follow as soon as possible. It is also of paramount importance that we keep emerging water needs, environmental concerns, and sound business practices at the forefront of our considerations.

Alternatives to Contracts

Reclamation can maximize its discretion and flexibility by seeking alternatives to contracts whenever practical. Thus, if formal contractual arrangements for the recovery of reimbursable

Codes	WTR.4.00
Area	PE
Control No	9403205
Keyword	SLU

project costs or to protect the interests of the United States are not required, we will utilize less formal operating agreements, letters of intent, and other less restrictive documents to memorialize the terms and conditions of an agreement. Such instruments must be approved in advance, with concurrence by the Solicitor and the Assistant Secretary - Water and Science, by the Commissioner. Requests for approval to use these instruments should be addressed to the Program Analysis Office, which will promptly process such requests and obtain concurrence and comments from other organizational components as appropriate.

Agreement on Contract Terms

In order to avoid unnecessary litigation, we must ensure that the parties to the contract share the same understanding of contract terms. Therefore, where a party to a contract is engaged in litigation over the meaning of specific contract terms or otherwise has expressed disagreement with the Bureau of Reclamation's understanding of terms, the Bureau should not enter into a new contract containing those same terms. In such situations, the Bureau should insist that the parties resolve differences before entering into a new contract, and set out with specificity the meaning of the terms for the purpose of the new contract.

New or Renewal Contracts

With the foregoing precepts in mind, the following policies shall henceforth govern the negotiation and administration of new repayment contracts and new water service contracts including renewals, under the authority of Reclamation law, including, but not limited to: the Reclamation Project Act of 1939, the Water Supply Act of 1958, the Warren Act, the Small Reclamation Projects Act, and the Safety of Dams Act.

1. Contracts will ensure that the Federal investment and Reclamation's administrative costs are recovered in an effective and businesslike manner. When negotiating these aspects of a contract, consideration needs to be given to the full extent of Reclamation's cost recovery objectives and policies, and to all sources of repayment for a given project, not just to the narrow issues presented by a given contract.

2. Contracts will provide for the appropriate balancing of all water uses, including new water demands, recreation, instream flow needs, enhancement of fish and wildlife habitat and resources, and water quality. Contracts will be drafted in a manner that will permit and encourage water transfers to occur and aid in our objective of providing water to a broader spectrum of water uses.

3. Contracts will be written to avoid or eliminate non-essential explanatory recitals and other restatements of past agreements, accomplishments, or rights of parties other than the United States. ←*

4. Contracts will promote improved water management and conservation and require water conservation plans (with implementation schedules) pursuant to the authority of section 210 of the Reclamation Reform Act of 1982 (RRA), as amended.

5. Pricing and rate-setting provisions will promote efficient use of project water supplies. Our pricing policy is to recognize market prices and/or the value of water in specific situations. We will rely less on cost-based or replacement cost-based methods of pricing and setting rates. In addition, wherever possible, we will eliminate or avoid using take-or-pay provisions, which tend to encourage excessive or unnecessary use of water. ←*

6. Contracts will provide for reasonable beneficial use determinations by Reclamation and require that the inappropriate or wasteful use of water be eliminated. Contracts should also provide for suitable and effective enforcement actions in the event there is inappropriate or wasteful use of water.

7. Contracts will be written for the shortest possible term consistent with good business practices and effective water management. The working presumption is that this period is 25 years or less. Contractors might be offered a "menu" of possibilities from which they could select the most suitable terms. Rather than offering a 25 year contract for a specific quantity of water, the contractor could be offered a 5, 10, 15, or 20 year contract, with different quantities and repayment terms for each contract. Another possibility might be to avoid long term "dropdead" contracts, and develop short-term contracts of 10 years that could be renewed annually, providing the user with a more or less permanent 10 year contract. Under this approach, when the Government decided that it no longer desired to renew, the user would have 10 years to make other arrangements. ←* ←* *

8. Contract negotiations will be in strict compliance with the RRA, the accompanying rules and regulations, and applicable policy, including the requirement to announce negotiations in advance, and will be conducted in a manner that provides opportunities for the public to observe and provide meaningful input.

9. Subject to delegation of authority and approval of a basis of negotiation, each Regional Director will be responsible and accountable for conducting contract negotiations and drafting proposed contracts.

10. Meetings held prior to the approval of the basis of negotiation for the purpose of gathering and exchanging factual information will be clearly identified as such and conducted in a manner that would not prejudice the pending approval of the basis of negotiation or the contract negotiations.

Amendatory Contracts

We will negotiate contract amendments to achieve as many of the preceding policy objectives as are applicable to a given situation as a condition of agreeing to the additional benefits sought by the water user. If Reclamation cannot obtain sufficient concessions of value to the United States to justify providing additional benefits to the water user, then we will exercise our option of simply not agreeing to contract amendments.

Repayment Contracts

Repayment contracts, although having a fixed repayment period, have implications lasting far beyond the original contract term. After payout of construction costs, water users often pay only O&M costs. O&M costs alone are not sufficient to maintain the services that are provided; replacement costs are major additional costs that have not always been collected. Thus, for paid-out repayment contracts, I want us to remedy the existing situations and avoid future situations where water users pay only a part of the costs associated with providing project benefits after payout of construction costs. There are at least three options available to address this problem: (1) charge for replacement costs, (2) levy a charge that is commensurate with the value of water, or (3) transfer title of the facilities to the water users. Water users must be encouraged to assume greater responsibility for all costs and to recognize the public values associated with Reclamation projects. I expect to see improved cost recovery that in turn will result in water prices that more nearly reflect market value and will encourage water conservation.

Preparation of Policies and Procedures

I am assigning the Director, Office of Program Analysis, in consultation with the Office of the Solicitor, the Director, Office of Operations, and the Regional Directors, to develop new policy guidance and procedures, and standardized contract provisions, to ensure the implementation of the above principles, and to analyze and recommend means for dealing with existing repayment contracts. Also, I am assigning the Director, Office of Program Analysis, to review Reclamation's beneficial use determinations. Your interest in and support for these important activities is appreciated.

Congressman John T. Doolittle
Chairman, Subcommittee on Water and Power Resources

Testimony prepared for Hearing on October 5, 1995, Boise, Idaho.

I appreciate the opportunity to speak to you this morning. I hope that I can convey to you the depth of frustration and growing animosity the farmers I work with are feeling towards the federal government. While I have respect for each of you individually, I have little respect for the federal government as a whole.

In my latest experience with the federal government, I was asked to handle the protest regarding the change in the use of Idaho's storage water filed by the BOR on behalf of our canal, New Dry Creek. We filed a simple letter of protest. We felt it unnecessary to use the services of our attorney at this time. Following the stipulation between the water users and the BOR, I spoke to many different people in the process of seeking information on this document to address our concerns. I was told repeatedly that this was the best course to follow to hold off hearings and court proceedings for a year in the hope that the ESA would be amended and state law could address the situation as well I now fully understand that we have been betrayed, and I have no hope that the ESA (which should be repealed as completely unconstitutional) will even be amended. We did not feel comfortable in signing the Stipulation as we, among many other water users were alarmed at the BOR's desire to rely on the NMFS's Biological Opinion. Their opinion seems to be all there is. Science is non-existent. When we did not sign the stipulation by the deadline stated, we began receiving phone calls. The first was from Tony A. Sullins, attorney for the BOR. He asked my husband, Dana, President of our canal, why we hadn't signed and stated we needed to get this done. We then received a call from our attorney, Bruce Smith, who had been previously contacted by Mr. Sullin. Mr. Smith left a message on our answering machine stating that this was the best way to proceed, the bugs had been worked out, and that if we didn't sign we would be subject to a long hearing process and costly legal fees. The next call was from Idaho Department of Water Resources attorney, Phil Rassier, who wanted to know if we were going to sign We asked ourselves why the concern with such a small canal company with only 3,000 acre feet of storage water. As if that wasn't enough, the ultimate red flag was the letter we received from the Department of Interior signed by John Keys This letter angered us so much that we felt we didn't want our signature on any document that had anything to do with the federal government. This same letter (or one similar) was sent to at least five canal companies who all reacted the same as we did. They all stated the letter was viewed as a threat and they would not even consider selling even one drop of water. This letter indicated that the Lucky Peak water is targeted as part of the 427,000 acre feet needed for the salmon flush and further states urbanization and the fact that some canal companies have never used their entire allotment, suggesting that we don't need it at all. It states "near term permanent acquisitions of storage space may need to take into account Reclamation's change-of-use application currently before the IDWR. It should still be appropriate to complete long-term rentals and enter contracts for permanent acquisitions at this time." It continues to say, while we will be given consideration for renewal of contracted water when our

 Submitted by Viki Purdy
5926 Floating Feather
Eagle Idaho 83616

contract expires in the year 2006, it will be the BOR that decides whether or not we need it. In our worst drought year, we used all but 200 acre feet of our storage water. We are very frugal with our water and our dollars, which is required by our contract with BOR in Section 25 (a) - entitled Economical Use of Water. It states that the BOR will take such action as may be necessary to correct wasteful, inefficient or uneconomic use of water. Now they use that as a means to take our storage rights. Did they forget that clause, or did they change their minds and forget to tell us? Storage water is very expensive All five canal companies have asked the question, how can the BOR charge irrigators operation and maintenance costs for decades, plus construction costs of storage reservoirs, and then stab us in the back? I guess the answer is that this is the federal government and they can do whatever they want. I can now say without a doubt in my mind that there is not a single state or federal agency that is on the side of agriculture with the exception of the office of Governor Batt! Regardless, we are pretty tough and will fight to the end, but knowing the government's tactics, we signed the stipulation with an attached letter following my conversation with Phil Rassier. He could not help me because the law prevented him from disclosing information as the IDWR was acting as the court in this case. We now have had to double the price of our water shares to cover legal fees, knowing full well that if we keep the attorneys in business long enough, we will be out of business! Water users are sued by so-called environmentalists using government grant money (our tax dollars in the form of grant money) Our tax dollars are used to pay for federal lawyers that in turn sue us or fine us for some regulation violation, the federal government steals our profits in the name of taxation, and then expects us to abide by every overzealous whimsical regulation, yet they know little about agriculture. The number of government agencies desiring control over our water, our land, and our ability to earn a living is so numerous we have lost count. I ask you, which government agency will you entrust with our future food production needs? Once the incredibly productive federal government takes on this task, how long before actual starvation begins to set in? How many wars have been lost because countries could not feed their people? I'm here to tell you, the family farm is not just a life style we seek to protect, it is much much more. We are raising our future farmers, no one learns to farm out of a book. Our kids are the best and the brightest, and they aren't staying on the farm. Why should they put up with the constant hell we are continually forced to endure. The tax laws interfere in every way possible to allow the farmer in the family keep the farm. I know we will never be the same after our ordeal to buy our farm.

As a girl who grew up in the city, I can tell you our farmers are of the highest integrity. They have a drive and work ethic unmatched by any industry. They continue to be more productive and the government continues to force costly regulations upon us. We need all our farms, large and small. There are no sacrificial lambs left.

In my opinion, the BOR should be abolished. It has lost all credibility with the farmers and has made a mockery of it's charter. The letter which I refer to has sealed itself into an adversarial position with farmers. Farmers call it the "Bureau of Recreation" chartered now to meet the recreational wants and whims of a few above the long term best interests

Submitted by Viki Purdy
5926 Floating Feather
Eagle Idaho 83616

of this country. It represents fools that call themselves environmentalists. These people know nothing about true survival with mother nature.

In closing, I must say I am one of the angriest farmer of all, because I am the wife of the best agriculture has to offer. I live with the irrigator whom you threaten without just cause and it is time you left us alone to do what we do best!

NO WATER, NO CROP, NO FARM, NO FOOD!

Submitted by Viki Purdy
5926 Floating Feather
Eagle Idaho 83616

(The attachments were placed in the hearing record files of the Subcommittee.)

Chairman Doolittle and Members of the Committee,

My name is Steve Campbell. I live 130 miles north of where we are today in Meadows Valley. My great grandfather and two of his brothers homesteaded three ranches in that valley 115 years ago. Members of our families have made their living with cattle through grass production since that time. Our grass is known throughout the western livestock industry as one of a handful of premier areas for summer grass for cattle.

What we do has never been easy or a get rich quick scheme. The early beneficial use filings on stream water in this century and the construction of water storage reservoirs has allowed us to continue with our niche in the cattle rearing cycle. Without dependable irrigation water it will be impossible for us to continue pasturing cattle. I am not aware of any other economically viable use of agricultural land in Meadows Valley. Without irrigation water our century old ranches will no longer exist.

Until the recent past, our uncertainty about water was what will Mother Nature provide next year? Lately, it seems that the rules are changing. In 1978 we were all required to file and pay a fee on our water rights. Then in 1988 we had to go to Boise to file and pay again. Now we have had to join together to hire legal counsel to defend ourselves against the Federal and Indian instream flow claims.

Approximately ninety percent of the water users in our area have joined our group. That level of participation from a group of people who are typically of the most independent sort is highly unusual. I feel safe in saying this participation is because we feel "our" Federal Government is threatening our way of life and our very economic being.

One of the water users who chose not to join told me why. He moved here from central California where he had agricultural land. Threatened with a similar situation they hired legal counsel and spent a lot of money, only to lose most of their water. He said "If you are fighting the Indians over water, you have already lost and I am not going to throw anymore good money after bad."

After we personally pay for our own legal counsel to protect our water rights, we see our tax dollars being used by Federal

institutions to file against our water rights as they have exempted themselves from paying their filing fees. It is also very frustrating that the Federal and Indian claims were done in such a manner to make it very cumbersome and expensive for us to object. In many instances, several Federal groups would file for the same instream flows in the exact same river reach. This forced us to file many objections per river reach rather than one objection per river reach. This tactic forced our small drainage to file almost 200 objections per person to protect our water rights. The magnitude of the effort to object to Federal claims simply overwhelmed many and forced others to seek expensive legal assistance.

According the Idaho water law, as beneficial use claimants, we have to pay our fees, must wait for a field inspection to show that the place of use and quantities claimed are accurate, and show almost continuous use of said water. The Federal and Indian instream claims go by a different set of rules. If no one objects to their claims they are granted. They have exempted themselves from the filing fees. Obviously they don't have to show continuous use. When was the last time the Indian or Federal groups requested their "claimed" 130,000 cubic feet per second to flow past Lewiston?

I just heard Tuesday that the Forest Service withdrew 98 percent (all but 70) of their claims. This is good news. What would it have saved the water users in the state if they had not filed these frivolous claims in the first place? If Colorado sets any precedent, we will get to go through all of this again. Are there any rules as to how Government agencies have to behave?

I was taught that "controlling your water" when you irrigate makes the major difference in the ranches in our area. If others "controlled our water" it would absolutely make a difference in our ranches. The Federal government has been looking for any means to increase their control over our private property and our lives. The Endangered Species Act, wetlands regulations and the Clean Water Act have been very effective for them. These acts are used to jerk us around and to take measures that have no measurable impact on the environment or the species of concern but real impacts on us.

We need Congress to demand accountability of the Federal agencies. Specifically in the case of the Federal threat to our water rights we need to have the involved agencies define the social and economic impact of their proposed action. They need to have public

participation, particularly with the effected people to hear what they are doing to us and to tell us why they are doing it. We need to know why the Forest Service still has 70 water right claims. Why has the Fish and Wildlife Service filed for instream flows? Why can the Federal groups file for water rights without preparing Environmental Impact Statements? We need the Federal agencies to quit trying to steal water from the irrigators in a clandestine manner. Federal water right claims should require the same standard of beneficial use as individual claims. It appears that we do not have the skill nor the time necessary to protect ourselves from our own Government.

Testimony of Wendy L. Wilson
Executive Director, Idaho Rivers United
before the Water and Power Resources Subcommittee of the House
Committee on Resources, concerning
Federal Actions Affecting Idahoans' Water Rights
Boise, Idaho , October 5, 1995

Thanks you for this opportunity to address the subcommittee today. My name is Wendy L. Wilson, I live at 3920 Twilight Court, Boise, Idaho, 83703.

Idaho Rivers United is a not-for-profit citizens' organization representing the interests of people who use and enjoy Idaho's fisheries and waterways. We are an independent citizen watchdog organization with over 1,400 members. We are run by a volunteer board of directors composed entirely of Idahoans, most of who are Idaho-born. We are not affiliated with any other organizations.

In Idaho, before the turn of the century, irrigators could divert the entire Snake River, over 16,000 cubic feet per second. Dams were then built by private efforts to help the newer wave of immigrants get water from rivers that were being dried up every year by the first wave of immigrants. After 1906 and the Reclamation Act the federal government came into the dam building business as the biggest cash cow any frontier farm boy had ever seen. The costs of the Boise Project of the Bureau of Reclamation, after the full amoratization period, will be paid for primarily by U.S. taxpayers and BPA ratepayers. A full 90% of the real costs of the project (including carrying costs of the capital subsidy and irrigator "inability to pay" calculations) will not be paid for by irrigators, even though all but 15% of the space in the reservoirs is allocated to irrigation.

Today Idaho's water rights system is a stacked deck against the rights of fish and wildlife to even exist. The first-in-time first-in-right principle, if honestly applied, would make water rights for fish senior to all irrigation and hydropower water rights. Those pesky fish didn't fill out the forms on the day of statehood, so they lost out.

In fact Idaho water laws allow fisheries water rights only in extremely limited situations, ones where there are no conflicts with irrigation, and only where the Idaho Water Resource Board itself will actually hold "minimum flows". The concept of optimal flows for fisheries is not recognized in Idaho Code. The Forest Service, the BOR, the Army Corps of

Engineers, none of them can hold minimum flow water rights under state law. But then, under state law, I can't put a bucket outside of my house and collect water for fish in the Boise River because the system is "fully appropriated" and the fish didn't get any.

The quasi-religious fervor of Idaho water development and the real financial value of water rights, have created a state water rights system that just doesn't recognize the broader public needs for a healthy ecological system, clean water, or sustainable watersheds. For example: every instream flow water right approved by the state is subordinated to future potential irrigation development. For example: the state-approved minimum flow at Milner Dam is zero cubic feet per second, even though the river below Milner is so polluted that it can't possibly meet water quality standards without increased flows from above.

Idaho Rivers United members include people who hold irrigation and domestic water rights in the state. But our human rights to life, liberty and the pursuit of happiness imply a broader water right than is recognized under either state or federal law. This is recognized in the judicial Doctrine of the Public Trust. Through it all water rights are subject to evaluation regarding their impact to the broader society. I have wondered how depleted groundwater, contaminated surface water and the widespread extinction of aquatic species could possibly pass any Public Trust evaluation.

We believe that the Doctrine of Prior Appropriation and the Doctrine of the Public Trust need not be at odds. We believe that the accepted concepts of beneficial use, reasonable diversion rates, and use-it-or-lose-it, leave plenty of room for intelligent multiple-use management of water. The federal government needs to recognize these principles and the state needs to re-evaluate how it can use them to achieve equitable, multiple use of our water resources.

Since 1906 the federal government has sent millions of dollars to help Western states run their water affairs without a lot of strings attached. Idaho has benefited tremendously. The Bonneville Power Administration took over when federal reclamation dollars started to get short. Again pouring millions of dollars in assistance to help Idaho run its water affairs.

Now that the limits of growth for water development have been reached, what will give? Now that the federal budgets have been maxed out, what will give? How should we approach the problems of competing demands on our water system?

1) Extinction of species should not be an option.

It isn't enough to say that fish have no water rights therefore they will have to go extinct. It isn't right and it is a sure recipe for ecological collapse. Yesterday's newspaper shows us that nation-wide mollusk species are going extinct from water developments. Do we care about clams? Probably not. Do we care that clams are what sturgeon eat? Maybe. Do we care that clams purify the water that people drink? Yes. How will we ever protect human health and prosperity if we decide to kill off other species one at a time.

2) Fish have to swim.

Salmon and steelhead need water. A "flow-based" solution can be reached without damage to existing water rights holders if we support placing the proportional weight of the recovery process on the proportional killer of salmon. The federal government is clearly to blame for the loss of Idaho's wild ocean-migrating fish. The federal government has clear choices to make between flow augmentation and lowering of the Lower Snake River reservoirs. The smart bet is on lowering the Lower Snake reservoirs during migration seasons.

3) Don't hide behind the killer ocean.

Rouge River Chinook have had a near-record year this year, Alaskan streams have had a near-record year for salmon returns. They all swim around in the same killer ocean. Idaho's fish have been killed by the dams. They are now at such low levels that they cannot withstand even natural forces such as drought and changing ocean currents. 95% of our remaining un-dammed habitat is sitting empty because of the four Lower Snake River Dams.

4) Quit Barging.

The feds must admit that the barging experiment has failed. Diseased fish, stressed fish, biologically disrupted and delayed smolts just don't come back. Federal plans for better barging means more flow augmentation. Last year 1.9 million acre feet from Dworshak Dam went to push fish faster on their way to collection facilities at Lower Granite Dam. Twenty years of experimentation has not solved the problem.

5) Give us true regional control over the federal hydropower system.

The state and tribal fisheries agencies have been in agreement for several years about the need to improve conditions for migrating fish (see the Detailed Fish Operating Plan, 1993). The Army Corps of Engineers is a rogue agency. It has never submitted to Northwest Power Planning Council control. The Power Council has been the regional authority balancing the needs of fish and power. The Power Council is now under a court order to do as the state fisheries agencies and tribes recommend. The only change needed by Congress is to strengthen the Northwest Power Act to specifically give the region control of the Army Corps and the dams during the migration season.

6) Quit supporting the federal status quo on the Lower Snake River.

As a nation we can't afford this kind of mis-management. For example: John Day Dam is authorized by Congress to operate at a Minimum Operating Pool (MOP) which is 7 to 11 ft below the current operating level. Going to MOP would have the same affect on smolt travel time as 3 million acre feet of flow augmentation water dumped on top of the full pool. The Power Council said do it in 1996, the National Marine Fisheries Service agreed, the state agencies and tribes have been begging for it for years. Two years ago the Corps said they would do it for $39 million dollars, now the Corps said it would cost $160 million to do it. They have no intention of doing it. The only difference in the price estimates is the increasing unwillingness of the Corps to change anything they do on the Lower Snake.

In 1992, the Corps showed that Lower Granite Dam could be drawndown and significantly increase river velocity and reduce smolt travel time. This drawdown would use 200,000 acre feet of water to save 6.5 million acre feet of flow augmentation water. The Power Council said to do it, NMFS said to assume we are going to do it in 1998, and again the Corps has no intention of doing it.

Drawing down Lower Granite to spillway crest would increase the particle travel time to 2.1 miles per hour from a current speed of .63 miles per hour. *If we are going to give up on barging, then decreasing travel time and spilling water away from the turbines is the only other way to let fish get to the ocean.*

The only other physical methods of reaching particle travel time objectives are to tear down the dams or use 140,000 cubic feet per second to flush water through the dams. There is no scientific disagreement over the fact that tearing down the dams would be best for salmon and steelhead. If anyone here wants to discuss whether or not the four Lower Snake River Dams are worth the continued loss of salmon and money spent trying to save salmon, then let's have a field hearing on that subject.

There is significant scientific disagreement over whether or not flow augmentation or flush will help improve salmon travel time because we can't get enough water in a predictable way. But some flow augmentation is necessary to avoid temperature blocks in the reservoirs. *Without the hydropower reservoirs on the Lower Snake River it wouldn't be necessary to augment flows for salmon except in extremely localized situations where tributary streams are entirely dewatered by irrigation.*

The Corps has done a lot of figuring on this subject, and some of it is enlightening. The Army Corps says that by lowering the Lower Snake River to spillway level and lowering the Columbia River Reservoirs to MOP, the travel time recommendation for salmon from the Columbia Basin Fish and Wildlife Authority can be met without any flow augmentation in 96 out of 100 water years. (Army Corps, BPA, BOR,Columbia River Salmon Flow Measures, Options Analysis/EIS 1992, p3-28).

7) Quit federal protection of the aluminum companies.

Just last week the Department of Energy signed contracts with the Direct Service Industries that amounted to a multi-million dollar give away. These companies are isolating themselves from paying the true costs of the system and making the BPA, Bureau of Reclamation and the Corps pass those costs on it residential ratepayers. The Direct Service Industries get 30% of BPA's power and employ just .2% of the region's workers.

If we reduced our load commitment to the DSIs the Lower Snake River Dams wouldn't even be needed. We could ship our grain by trains from Lewiston, restore the Snake River and have a harvestable surplus of salmon and steelhead for native American, sport and commercial fishing industries. According to the U.S. House of Representatives, the DSI's received over $1 billion in below-cost power sales from BPA in the last ten years. If the world price of power goes down, they pay less for the electricity they use.

21-090 O - 96 - 11

In other words, we are paying for cheap aluminum cans all over the world with dead Idaho fish. This is how our Idaho water rights are going down the drain. Our irrigation water, our drinking and recreational water and our fisheries water is being squandered by the federal government to protect the aluminum companies. The sooner Idahoans can set aside our differences about instream flows and appropriative water rights and focus on how we can unite to oppose this federal give-away, the better we will all be.

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE ON WATER AND POWER

Field Hearing
October 5, 1995
Boise City Hall
Boise, Idaho

Testimony of Patrick A. Takasugi
24405 Red Top Road
Wilder, Idaho 83676-5209
(208) 482-7251
FAX (208) 482-7210

U.S. House of Representatives
Committee on Resources
Water and Power Resources Subcommittee
"Federal Government Actions Affecting Idahoans"

Chairman Doolittle, Members of the Subcommittee and Representative Chenoweth:

My name is **Pat Takasugi.** My wife, Suzanne, and I farm 950 acres of irrigated cropland near Wilder and Homedale, Idaho. 790 of these acres are leased from various landlords. All the water comes from either BOR storage or from the Snake River..

The following written testimony shall address from various personal perspectives the issue of federal government actions and how they affect me and other Idahoans.

1. The **U.S. Fish and Wildlife Service** has filed for unappropriated waters with priority dates after August 17, 1937 and various other water sources in the general adjudication of water from the Snake River basin system. Referencing Executive Order No. 7691 and Public Land Order Nos. 3016,3110, 3098, 3661, 4425, 4425, 4426 and 5545, the USFWS claim as a Federal Reserved water right, waters which if granted will turn thousands of acres of productive farmland in Idaho back to highly erodible desert land. The granting of such a revolutionary bureaucratic request would turn property of people like Charles Pintler and his sons, Brad and Todd, and their families, into $70 or less vast regions of dust with no compensation. Some of this land they purchased for $1500 per acre or more. Why? The USFWS wants this water which helps to feed people across the world to raise the water levels of the Snake River in order to prevent foxes and coyotes from swimming or wading to river islands where they prey on young migratory waterfowl. Destroying the livelihood of farmers so someone can have more ducks and geese to hunt is a rationale that can be used only by people with full stomachs.

2. The U.S. Government on behalf of the **Nez Perce Indians** are also claiming all the water flowing in the Snake River at Lewiston with an 1855 appropriation date. The basis for this claim is for salmon restoration and other tribal purposes. The only things worse than the recognition of these claims to my farm and the other 20,500 Idaho farm families would be a nuclear detonation over the entire basin. But in light of these claims, there are concerns that a living dinosaur could be found and our U.S. government would file claim to our water on it's behalf from thousands of years prior. Besides providing employment for dozens of lawyers this claim demeans and destroys everything that the ancestors of Idaho' farmers sweated and worked for, plentiful and productive Idaho farmland.

3. The **Bureau of Reclamation** has notified many Idaho irrigation companies of their needs under the ESA and that 427,000 acre-feet will be acquired. The issue of BOR contracts expiring between irrigation companies are pointedly expressed as declining in the amount of water delivered in the future. This slow choking of Idaho agriculture comes from many sources as well as these actions by the BOR.

4. The "micro-managing" of Western waters by those in the Federal government has far reaching implications to all farm families in Idaho. We're not discussing whether or not we take one less shower a week. We are talking about 20,500 farm families losing their investments in the purchase of land and their livelihood. The "one size fits all" approach, which seems to be standard operating procedure for policy of the Federal government imperils the very foundation of agriculture in Idaho and the food source for many Americans. Such actions such as the **Central Valley Project Improvement Act (1992)** enacted in California carries with it criteria which has the potential of further choking out Idaho agriculture if it's guidelines are "exported" to us in this state under the guise of new regulations of the **Reclamation Reform Act of 1982**. My friends Bob Vice, Bill Pauli and Doug Mosebar in California are suffering now and we in Idaho have no desire to fall victim to the same quagmire of bureaucratic regulation.

5. When the obvious movement is towards local control on all levels of government across the country, actions such as those in Congress which reverse this trend must be challenged. I speak of the removal of moneys from the **Idaho Water Resources Research Institute**, which has for 25 years been an effective and efficient way of addressing state and local water-related problems by working jointly with the private sector. Other language in the "one size fits all" approach places priority setting with the U.S. Geological Survey rather than the current in-state Advisory Board. We can do it better when Idahoans are setting the priorities not the Federal government. Please correct this GOSPLAN thinking.

6. In Idaho, many of us farmers and many others have spent years on water rights and their adjudication. Congressional actions, interpreted by agencies, has superseded many of these tried and proven state laws. It has jeopardized every farm in Idaho and threatened the future of every farmer's sons to continue to farm this wonderful land in our state. When legislation such as the **Endangered Species Act** are passed or reformed, they should reference our water in accordance with the substantive and procedural requirements of the state whenever our water and it's use is involved.

7. Actions such as the filing of regulations by the **U.S. Corps of Engineers**, Walla Walla District, on "Single-Family Housing Nationwide Permit" (dated 9-8-95) are just one more regulation that threaten to bankrupt the ranching of the Troy Ziegler family, the Ryan Hughes family, the Lyle Hutchison family, John McDaniels family and the Bob Piva family. The **U.S. Forest Service** in February issued an injunction to halt all grazing, mining, logging and road building in seven Idaho National Forests. It was later withdrawn, but by the printing of a few lines a Federal government agency almost ruined and displaced the lives of the aforementioned ranchers and many more Idaho families. Again this year the U.S. Forest Service filed 3,670 claims on Idaho water. A rancher on the Challis Creek in order to protect his water right had to protest 60 of these filings of four pages each. Just the other day the Forest Service withdrew 3,600 of these claims that cost many ranchers and farmers thousands of dollars and hundreds of hours to address. It also cost the citizens of Idaho thousands of dollars for the Attorney Generals office to consider these claims. Idaho is not just a big national park. It is land that has been worked by families and their ancestors. If ever there was a situation that parallels the non-representative, abusive and non-compassionate governance of England's King George III, it is embodied in the over-regulation by U.S. agencies.

8. This summer a **U.S. Bureau of Land Management** employee noticed that rancher Frank Stoddard had his cattle grazing on Public Lands on the 18th of September where he has a grazing permit. Frank had thought his permit was good through September, but later checked and it was valid to September 15th. When the BLM employee noticed the cattle grazing on the 18th, he went to Frank's house and told in no uncertain terms that his invalid wife better get out there and move those cattle. Later in the month Frank had moved his cattle to his own land, but had left the gate open to the Public Land. The BLM employee noticing this, again went to Frank's house and berated his wife again and warned of serious actions to come. This "bullying" attitude is just another facet of a federal government that sees citizens as serfs on <u>their</u> Public Land and have taken a confrontational stature to the people of Idaho.

9. The **Shoshone-Bannock Tribes** claim on water holds the potential of adversely affecting the farming of many Eastern Idaho families, like the Dale Rockwood family, the Val Hammond family, the Mark Ricks family and the Mark Mickelsen family. The laws and the judicial decisions are not just affecting the fish and animals, but especially the 20,500 farm families in Idaho. There are also claims filed by **the Northwestern Band of Shoshoni and the Shoshone-Paiute Tribes.**

10. The **Bureau of Reclamation** has proposed the transfer of Water Right Nos. 63-03613, 63-03614, 65-02917, 65-09483, 67-02386, 67-03614, 67-02389, 65-02927D, 21-02156, 01-10034, 85-02146, 01-02068, 37-02783, 01-02064 and Application for Amendment of Permit Nos. 25-07004 and 63-3618 of the United States of America.

A change in the nature of use of water rights has the potential of unraveling the very foundation of agriculture in Idaho. When fish are placed on a higher priority than people, it is time to realize that something is wrong. Take Idaho's water and you sentence it's farmer families to bankruptcy and social poverty. With school funding having difficulty in acquiring the needed dollars, the U.S. government has spent over a billion dollars in the last 12 years on salmon recovery. In the last five years, each returning salmon conservatively cost almost $400,000 and the re-introduced wolves have cost about $200,000 each. Something is wrong in D.C..

Conclusion

While I was visiting with some ranchers, it has become clear, crystal clear, that the Federal Government has chosen to become an entity of itself and that those of us who may appear to be in the way of their masterful management of Public Lands, water use and the ESA can be regulated out of the way. The case for local control and management of Idaho's water and lands must be supported before those of us who are laborers of the land are discouraged by financial ruin or hopeless attention to these "one shoe fits all", "micro-managing" and "bullying" attitudes of our former "government of the people, by the people and for the people."

The insightful John Adams wrote:

"The moment the idea is admitted into society that property is not as sacred as the Laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. Property must be sacred or liberty cannot exist."

As one of many Idaho farmers who produce a commodity of value for the benefit of all Americans, I ask that you as keepers of the law not to allow the tyranny of bureaucracy to treat your constituents as serfs and vassals of a Federal Government that has lost it's common sense and its compassion.

TESTIMONY OF THE SHOSHONE-BANNOCK TRIBES TO THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON RESOURCES, CONGRESSMAN JOHN T. DOOLITTLE, CHAIRMAN SUBCOMMITTEE ON WATER AND POWER RESOURCES FIELD HEARING ON FEDERAL GOVERNMENT ACTIONS AFFECTING IDAHOANS' WATER RIGHTS AS PRESENTED BY LIONEL Q. BOYER, FISHERIES POLICY REPRESENTATIVE
Boise City Hall, 150 N. Capitol Boulevard, Boise, Idaho, October 5, 1995

The Shoshone-Bannock Tribes were asked to appear before the subcommittee to present and discuss the Tribes' views on drawdowns and flow augmentation. In order to address the Shoshone-Bannock Tribes' views on flow augmentation and drawdown, it is important to recognize the overall Tribal perspective on the natural condition. The dominant society only defines uses of the water as beneficial, so long as such uses are economically successful. Yet, protection of the natural resource, this Earth, our home, is not thought of as a beneficial use, and is rarely even thought of as economically feasible. How can we call the destruction of our home and her inhabitants, including ourselves, successful? The extinctions that we have seen and are impending are signals that we are next. Our children, and their children, are next.

The policy of the Shoshone-Bannock Tribes is to pursue and promote the restoration of the Snake River system to a natural condition. The Tribes fully support and promote the permanent restoration of the natural river level in the lower Snake River (below Lewiston). The natural lower Snake River option provides many benefits, including but not limited to: eliminating the need for augmentation for salmon migration flows from the upper Snake River and large storage reservoirs; providing a significant annual net economic benefit; reducing the taxpayer and ratepayer burden of navigation and inefficient electricity production costs associated with the four lower Snake River dams; providing healthy economies and increased employment due to alternative commodity transportation systems, and riverine and healthy riparian-based recreation in the mainstem Snake River; achieving the solution to the endangered salmon; and significantly reducing the federal government (primarily Bonneville Power Administration and Corps of Engineers) inordinate expenditures on many more studies upon studies and makes such funding available for implementing the actions that we know are needed for the resource.

If the natural river level is restored in the lower Snake River, then the salmon require only ten thousand cubic feet per second instead of the 140,000 cfs currently required to achieve the smolt travel time objectives needed for recovery and restoration. Based on modeling by the Northwest Power Planning

Council and the Columbia Basin Fish and Wildlife Authority, flow augmentation from the upper Snake River is not required to meet Snake River salmon flow targets with natural river levels in the lower Snake River. According to the models, some upper Snake River water may be required to meet the Columbia River flow targets (at the Dalles Dam). During 10 of 50 years, less than 500,000 acre feet are required (similar to the amount currently needed every year from the upper Snake River), and in the 5 lowest water years out of 50 years, more than 500,000 acre feet are required - but only to meet the Columbia River targets, not to meet the Snake River velocity requirements. Various other water sources are available for the Columbia flows.

The present configuration of the Snake and Columbia rivers is operated by drafting large amounts of water from the huge storage projects (Libby, Hungry Horse, Grand Coulee, and Dworshak reservoirs and the middle and upper Snake River) during the spring and summer in an attempt to provide the salmon migration velocity requirements of the mainstem lower Snake River. These deep drafts of the large storage reservoirs are often called drawdowns, and are confused with the alternative option of drawing down the lower mainstem Snake River at the Lower Granite, Little Goose, Lower Monumental, and Ice Harbor dams. The deep drafts of the storage reservoirs wrecks havoc with those reservoirs' resident fish ecosystems, and of course, the local economies dependent on those resources. The water that is forced out of those large storage reservoirs is inadequate to provide the salmon migration requirements. The existing conflict between keeping stable, full storage reservoirs and irrigation storage in the headwaters, versus providing velocities for salmon recovery, needs to be resolved.

The regions' fish and wildlife managers have all agreed that river naturalization clearly offers the most direct solution to the water availability and fish passage velocity requirements in the lower Snake River (CBFWA comments on Amendments to the NPPC Strategy for Salmon, November 15, 1994, pg.5-3). This position is also included as an option in the 1995 hydrosystem biological opinion, the Proposed Recovery Plan, the System Operation Review and System Configuration Study, and the Power Planning Council's Fish and Wildlife Program. The needs of the large storage reservoirs and the mainstem salmon requirements are both met with this solution. Before any more hundreds of millions of dollars are

expended annually for futile attempts at recovery with more curtains, screens, bypasses, and barges, the region, and Congress, needs to make a well-informed decision about the natural river option in the lower Snake. These salmon and related anadromous fish like the lamprey and sturgeon do not deserve to be slowly ground to death as is currently happening.

The four lower Snake River dams are not an efficient source of electric power benefits. The projects were authorized by Congress to provide an 85 percent electric power production benefit, yet the four dams, combined, only produce 1,000 megawatts - 4.6 percent of the regions' electricity production. This power is produced and wheeled at a cost to the ratepayer. This power can more efficiently be produced with alternative methods, and saved with meaningful energy conservation measures.

Toll-free navigation provides no net economic benefit, and is a heavy taxpayer and ratepayer subsidy. The ports on the lower Snake River can prosper with alternative commodity transportation systems such as rail and trucks - that provide more employment than the existing navigation system. These dams were authorized to provide only a small portion of their benefits to navigation - around 10 percent. Instead, 85 percent of the benefits are attributed to navigation, which is actually a tremendous cost to the taxpayer.

The amount of lands irrigated by the lower Snake River is minimal, about 30,000 acres; and provide no net economic benefit. Restoring the natural river level yields a $158 million annual economic benefit according to a report by Phil Lansing (An Economic Analysis of Four Federal Dams on the Lower Snake River, 1 June 1995). Other economic analyses also support these conclusions.

Bypassing the dams does not require removal, nor destruction of the facilities. The structures can basically be moth-balled, and channels built around them to provide the natural river condition. The U.S. Army Corps of Engineers have concluded that restoration of the natural river level in the Snake River is the quickest, and cheapest drawdown option. Perhaps future technology will allow some use of the facilities with a balance of fish and wildlife needs, navigation, and power generation.

Recreation benefits are secured in the large storage reservoirs, and the communities along the lower Snake River can profit from river-based recreational opportunities, including rafting, fishing for native trout and salmon species, and waterfowl hunting associated with a healthy riparian ecosystem.

The Tribes have dealt with extreme changes in the recent past. These changes are not easy. We ask that the region, and Congress, consider the changes that were made in the past 30 years in the lower Snake River, and weigh the benefits and costs of those changes, in order to make a well informed decision whether to allow "progress" to take the necessary step toward long-term sustainability, of not just the fish and wildlife resource, but of our own survival, and the survival also of our greatgrandchilren's grandchildren.

The existing hydroelectric, navigation, and irrigation system of the Snake River is operated with tremendous conflict. This conflict pits industry against industry, fish against fish, tribes against states, states against states, states against feds, and on and on. The existing conflict between keeping stable, full storage reservoirs and irrigation storage in the headwaters, versus providing velocities for salmon recovery, can be resolved. Permanent restoration of the natural river level in the lower Snake River provides the solution to recovery of the endangered salmon; eliminates the need for salmon flow augmentation storage in the upper Snake River; leaves the large storage reservoirs at stable and full levels; provides a significant economic benefit, including increased employment, while relieving the existing tax and ratepayer burden for industrial and power subsidies; and provides healthy local economies.

As is evidenced by our testimony, the Tribes' views on flow augmentation and drawdown are part of a larger, overall view of comprehensive natural resource management. Commodities-based uses of the rivers should be managed in accordance to the needs of the fish and wildlife. This does not appear to be the management philosophy of the dominant society, largely tied to Manifest Destiny. If, instead, fish and wildlife are managed in accordance to commodities-based uses of the river, the river, and its inhabitants, disappear. This is unacceptable to the Shoshone-Bannock Tribes.

TESTIMONY OF THE SHOSHONE-BANNOCK TRIBES TO THE
U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON RESOURCES,
CONGRESSMAN JOHN T. DOOLITTLE, CHAIRMAN
SUBCOMMITTEE ON WATER AND POWER RESOURCES FIELD HEARING ON
FEDERAL GOVERNMENT ACTIONS AFFECTING IDAHOANS' WATER RIGHTS
AS PRESENTED BY LIONEL Q. BOYER, FISHERIES POLICY REPRESENTATIVE
Boise City Hall, 150 N. Capitol Boulevard, Boise, Idaho, October 5, 1995

Lionel Q. Boyer, Fisheries Policy Representative, Shoshone-Bannock Tribes, Fisheries Department, Box 306, 29 Shoshone Drive, Fort Hall, Idaho 83203. Phone (208-238-3748). Fax (208-238-3742).

FOLLOW-UP ADDRESS

The policy of the Shoshone-Bannock Tribes is to pursue and promote the restoration of the Snake River system to a natural condition. The Tribes fully support and promote the permanent restoration of the natural river level in the lower Snake River. The natural lower Snake River option provides many benefits, including but not limited to: eliminating the need for augmentation for salmon migration flows from the upper Snake River and large storage reservoirs; providing a significant annual net economic benefit; reducing the taxpayer and ratepayer burden of navigation and inefficient electricity production costs associated with the four lower Snake River dams; providing healthy economics and increased employment due to alternative commodity transportation systems, and riverine and healthy riparian-based recreation in the mainstem Snake River; achieving the solution to the endangered salmon; and significantly reducing the federal government (primarily Bonneville Power Administration and Corps of Engineers) inordinate expenditures on many more studies upon studies and makes such funding available for implementing the actions that we know are needed for the resource.

TESTIMONY OF LAIRD J. LUCAS
Director, Idaho Office
Land and Water Fund of the Rockies

Presented to the House Committee on Resources
Subcommittee on Water and Power
Boise Idaho
October 7, 1995

Introduction

My name is Laird J. Lucas. I live here in Boise with my wife and two children. I grew up in Oklahoma and my wife is from Texas -- both flat, humid places that can get as much rain in a couple spring thundershowers as Boise gets in a year. Although we are proud of our roots, we are thrilled to live in this great state of mountains, high desert, canyons, and friendly people.

I am an attorney with the Land and Water Fund of the Rockies ("LAW Fund"), a non-profit organization that provides legal advice and representation to state and local conservation groups in the Rocky Mountain region. I run the LAW Fund's field office in Boise, and I represent Idaho conservation groups on resource and environmental issues -- particularly those involving water.

Indeed, I would say that the focus of my job is to help give Idaho's conservation groups and the larger public a greater say in how Idaho's water is managed. Traditionally, it has been solely water right holders who have determined how Idaho's water is used, without regard to other values -- to the point that many rivers and streams in this state are completely dried up by late summer, with disastrous consequences for fish, wildlife, and the people who recreate in and around them.

In a state like Idaho, where recreation is increasingly important -- and has already surpassed many traditional resource industries in its dollar contribution to the economy or numbers of people employed -- a growing segment of Idaho's population feels that these harms to our resource treasures are no longer acceptable. Increasingly, Idahoans demand that greater attention be paid to the value of water for non-consumptive uses, such as fishing, recreation, or maintaining wildlife habitat. Increasingly, they demand that their voices and concerns be heard by those who are making the decisions that affect them.

There is no question that Idahoans want to maintain control over how Idaho's water is used and allocated -- the key issue which I understand this subcommittee is concerned with. Because the federal government historically has been an indispensable partner in the development of Idaho's water resources -- at huge taxpayer expense -- the federal government unavoidably has and will continue to play a major role in Idaho water policy.

Consistent with the trends in Idaho water law, which I will discuss, and because water is so important to all people, the purpose of federal policy should be to ensure that all interests, all voices are heard in how water is to be used and managed in this state.

Water Is A Public Resource

The most important thing about water -- and particularly in the arid western states, like Idaho -- is that it is first and foremost a **public** resource, which is to be managed and used for the highest social good. This is the bedrock principle underlying the prior appropriation doctrine of Idaho water law, and the law of other western states.

Indeed, Idaho water law establishes that all waters in Idaho are owned by the State of Idaho, on behalf of all the public. This principle is found in Article XV, Section 1 of the Idaho constitution, which addresses water; and in Idaho statutes, including Idaho Code § 42-101.

Because the state owns the water, water rights are what are termed "usufructuary rights" -- rights of use, not ownership. A water right under Idaho law thus gives its owner the right to use water under carefully defined conditions -- from a particular source and place of diversion, in only specified amounts, and for only particular uses. Of course, a water right is only good so long as there is enough water to fill it, after the people with more senior rights to the same water have gotten theirs. And water law recognizes the key social importance of water to states like ours, by providing that you may lose your right if you fail to use your water, or if you waste it.

Because water is such a valuable public resource, the law's regulation of water use is continually changing in response to changing demands of society. Eighty years ago, the U.S. Supreme Court recognized this principle in an Idaho water rights case, entitled Schodde v. Twin Falls Water Co., 224 U.S. 107 (1912). The plaintiff there irrigated land along the Snake River using waterwheels to pick the water up out of the river. Based on his senior water rights, he tried to stop Twin Falls Water Company from building Milner Dam downstream, because the reservoir behind the dam would stop his waterwheels from working. The Supreme Court ruled against him, stating his reliance on the waterwheels was **unreasonable**, in light of changing technology and social demands. In so holding, it invoked "the general principle that the right of appropriation must be exercised with some regard to the rights of the public. It is not an unrestricted right. . . There is no right under the constitution and laws of the State of Idaho to appropriate the current of the river so as to render it impossible for others to apply the otherwise unappropriated waters of the river to beneficial uses." 224 U.S. at 117, 119-20.

The notion that water law has developed in response to changing social demands is also reflected in a 1974 Idaho water case, which recognized for the first time in Idaho that it is a "beneficial use" for some water to be kept in the river, as instream flows for fish, wildlife and recreation. State Dept. of Parks v. Dept. of Water Admin., 530 P.2d 924, 936-

37 (Idaho 1974). The Schodde and the Dept. of Parks cases -- separated in time by half a century -- both reflect the same underlying principle: water rights recognized under state law are necessarily dependent upon changing social values and determinations about what is the highest, best, most beneficial use of water.

Even more so today, the people of Idaho are demanding increasingly greater protection of their water and the wildlife, recreation, and other resources that depend on water. They want to have their voices heard. They want to have healthy streams and rivers and lakes. And Idaho law is slowly changing to reflect these concerns.

The Idaho legislature, for example, has installed a "public interest" requirement for new or changed water rights. Idaho Code § 42-203A(5). And the idaho Supreme Court recently reaffirmed that all water rights in Idaho are held subject to the public trust doctrine, an ancient legal concept under which water is to be managed by the state in a fiduciary capacity for all Idahoans. Idaho Conservation League et al. v. State of Idaho, ___ Idaho ___, ___ P.2d ____, 95.18 ISCR 805 (1995).

This view of water law as a growing, changing body of law, which responds to society's changing demands, should inform your understanding of federal water rights in Idaho. No less than claims based on state law, federal water rights should also serve the broadest public interests. Federal water policy in Idaho should do no less than Idaho water law is doing in recognizing the public's deep and abiding interest in water and how water is used.

Federal Water Rights In Idaho

To understand the role of federal water rights in Idaho, you must understand the state's history. Unlike the original colonies, the federal government acquired the territory that is now Idaho long before this state ever existed. When Idaho was admitted into the union, the federal government retained ownership of large amounts of the landmass in Idaho, as federal property. That federal property now constitutes, among other things, the largest wilderness area in the lower forty-eight states; the heavily-used Sawtooth and Hells Canyon National Recreation Areas; the unique Craters of the Moon National Monument; and large expanses of National Forest and BLM lands, which are designated multiple use lands for grazing, timber harvest, recreation, and other purposes.

As any farmer in southern Idaho will tell you, land in Idaho without water rights is worth very little. That same principle applies to federal lands in Idaho. Unless federal lands enjoy rights to the waters which flow through them, and which are necessary for their continued health and productivity, the very purpose of having federal lands is defeated. And their value is sharply diminished.

Indeed, the U.S. Supreme Court recognized this basic reality -- that federal land must have sufficient water rights to support its designated uses -- back in 1908, in the case

Winters v. United States, 207 U.S. 564 (1908). The Winters principle has been confirmed many times since by the Court, and it is establishes that when federal lands reservations were established, the United States reserved sufficient water to fulfill the purposes of the reservation. These "reserved" water rights carry a priority date as of the date of the reservation.

Some people may question whether the federal government should even own any land in Idaho. But that is a debate for some other forum. As I understand it, this subcommittee is concerned with issues pertaining to the federal government's impact on water and power in the Northwest, not with whether the government should be turning over its lands to the states. It is unequivocally the case, however, that if the federal government is not able to control water on federal property, or if federal water rights are taken away somehow, it would be breaching its trust with the people, and diminishing the value of the property with which the government has been entrusted. Further, loss of federal water rights would seriously impair the government's ability to manage federal lands for the purposes to which it is supposed to, whether that is for wilderness, timber production or grazing.

The suggestion that there is some sort of federal water rights "grab" in Idaho must therefore be rejected. Although some in Idaho might not like it, the federal government should operate no differently than any other prudent business person who owns and manages property -- it must claim and file for its water rights in the Snake River Basin Adjudication, or it will lose them. To do otherwise would be to violate the most basic notions of prudent property management.

I learned just this week, however, that the Forest Service has **withdrawn** over 3,000 water right claims it had filed in the Snake River Basin Adjudication. This action was done with no public notice, input, or environmental review of the impacts it might have on the Forest Service lands that are affected. And it comes after the federal government spent innumerable hours and dollars in identifying, researching, measuring, quantifying, and asserting these claims. I think this subcommittee should be deeply concerned about this unilateral give-away of the public's property, in the form of federal water rights; and should take every action it can to require the government to live up to its duties to protect the public's heritage and stake in these lands.

Bureau of Reclamation Role

I understand that one of the major topics of concern to this subcommittee is a recent set of applications by the federal Bureau of Reclamation to change the nature of some of its storage reservoir rights into instream flows for salmon migration and other purposes. I am involved in that proceeding, representing a large coalition of Idaho groups. I would offer our perspective on this issue.

First, the history of water development cannot be told without major focus on the Bureau of Reclamation. As Wallace Stegner so elegantly portrayed in his masterpiece on the

development of the arid west, Angle of Repose, private attempts to irrigate the desert in Idaho on a large scale were largely unsuccessful. It was simply too big a job, and too risky, for private enterprise to take on alone. And as Marc Reisner documents in detail in his book, Cadillac Desert, it was only after the Reclamation Act of 1902 was passed that irrigation projects on a large scale were made possible, in Idaho and other states.

Thus, it was federal money -- taxpayer's money -- that built the large dams and reservoirs in Idaho. It is the taxpayers of this country who continue to subsidize many of those projects. The private water users in Idaho thus owe a huge debt -- of gratitude, as well as financially -- to the federal government for all of its assistance in turning Idaho's arid high desert lands in productive fields of potatoes, alfalfa, and sugar beets.

Federal reclamation law determines the scope, size, and nature of the activities the Bureau of Reclamation can engage in, and it has since 1902. Water users in Idaho understand this point well -- they work with BuRec officials on a day-to-day basis. Indeed, the Bureau defers many of the management decisions about its reservoirs to private water users, demonstrating the close level of cooperation.

The present Bureau of Reclamation applications for salmon instream flows hardly represent a massive federal assertion of control over Idaho water. Importantly, BuRec is **not** asserting that it has control over the water as a matter of federal law under the Endangered Species Act. Instead, it has made very clear that it intends to work under Idaho water law, through the state administrative procedures. The Bureau should be commended, not rebuked, for this effort to operate within Idaho water law.

Further, the focus of the Bureau's efforts is to use water from uncontracted federal reservoir storage for instream flow purposes. The Bureau is **not** taking anyone's water against their will. It is using water that we, the federal taxpayers, have paid for, and which no other private party wants. Although many of us disagree that this exercise will achieve its stated aim -- i.e., to save salmon, which only fixing the lower Snake and Columbia river dams can do -- nevertheless it is perfectly appropriate for the Bureau to go forward in the way it has.

The Future and Proposal For Reform

In my view -- and this view was recently echoed by Keith Higginson, who served for many years as Director of the Idaho Department of Water Resources -- the future of water use and policy in states like Idaho will be found in watershed-based planning, watershed-based solutions, in which **all** concerned and affected interests will have a say in how the water in their area is used, allocated, and managed.

Let me give you an example of what I mean. Bear Lake sits on the Idaho-Utah border and is essentially our equivalent of Lake Tahoe. It is -- or used to be -- a clear, alpine lake, with numerous houses and state parks on its shores, a lake heavily used for

recreation of many forms. But unlike Lake Tahoe, Bear Lake has been treated for the last half-century as a reservoir, storing the waters of nearby Bear River for downstream hydropower and irrigation use. During the recent decade of drought, water withdrawals caused the lake levels to plummet, severely impacting the lake. But despite repeated concerns expressed by local homeowners, businesses, and others, the downstream irrigators refused to adjust their demands on the lake's water, asserting that their water rights were absolute and immune from any challenge.

The LAW Fund entered this arena last year, representing a local group led by Merlin Olson. Through proceedings we brought under Idaho state law, and under the federal Clean Water Act, we managed to get all affected interests to sit around one table and discuss their problems. The result is unprecedented settlement in which the downstream farmers have agreed to "share the pain" of future droughts, by cutting back their water use as lake levels fall; and the parties have formed a Bear Lake Advisory Group, comprising all affected interests, to address long-term management of the lake and conservation solutions.

This pattern of developing localized, watershed-based solutions to water resource conflicts is being seen in many other places. Another you have probably heard of is in the Henry's Fork in eastern Idaho. The University of Colorado Natural Resource Clinic recently documented some 80 different watersheds around the west where similar efforts are underway.

These watershed groups are working with both federal and state agencies to implement forward-reaching solutions. Federal laws and federal agencies could be, and should be, playing a facilitating role in these efforts. Unfortunately, however, we have encountered some obstacles in unexpected places from federal law. One of them is the Federal Power Act.

If you truly want to reform federal water and power policy so that it removes a heavy federal hand from state-based solutions, you should consider amending the Federal Power Act. In 1990, the U.S. Supreme Court rendered a decision under the FPA, known as the "Rock Creek" decision (California v. FERC, 495 U.S. 490 (1990)), which has highly unfortunate consequences for states' abilities to regulate their water resources under state law. The Rock Creek case held that if the Federal Energy Regulatory Commission issues a hydropower license which contains any conditions to protect fish, wildlife, streamflows, or similar matters of public concerns, then states are preempted from imposing any different conditions in their issuance of water rights for such projects. There, California sought to impose higher minimum streamflow requirements under California law, than FERC had required in the FPA license. According to the Court, this was prohibited by Congress when it adopted the FPA over a half century ago:

> [W]e conclude that the California requirements for minimum instream flows cannot be given effect and allowed to supplement the federal flow requirements. . . . As Congress directed in FPA § 10(a), FERC set the

> conditions of the license, including the minimum stream flow, after considering which requirements would best protect wildlife and ensure that the project would be economically feasible, and thus further power production. . . . Allowing California to impose significantly higher minimum stream flow requirements would disturb and conflict with the balance embodied in that considered federal agency determination.

495 U.S. at 506 (citations omitted).

This holding has been interpreted, in Idaho and other states, as overriding state water laws and essentially forcing state water agencies to grant water rights where a FERC license has issued. FERC proceedings take place in far-away Washington, D.C., without any effective notice to the public in the area where the project is proposed. Licenses are issued by FERC often without any public involvement at all. By contrast, state water rights applications -- as in Idaho -- are published in local newspapers, and often generate substantial public input. The state agencies are far better situated to assess local conditions and concerns, and to impose requirements upon water permits which protect the public's interests. The FPA in its present form thoroughly frustrates that local control over water decision-making, and represents the worst form of federal interference.

Thus, if you want to reduce the opportunity for the federal government to override state control of water, start with Federal Power Act.

Thank you for this opportunity to present my views.

Supplemental Sheet

Laird J. Lucas
Land and Water Fund of the Rockies
Idaho Office
PO Box 1612
Boise ID 83701

(208) 342-7024 -- phone
(208) 342-8286 -- fax

Summary of testimony:

Water is a public resource, and the public should be fully involved in decision-making about water uses and water management. Idaho law is increasingly reflecting this greater public involvement, and federal law should follow and encourage this trend. Because of the long and historically important role played by the federal government in Idaho -- both as a landowner and through the Bureau of Reclamation -- there is naturally an important federal role in Idaho water policy and law. One key area where reform is needed, however, and where federal law is overriding state water law without any sound reason, is under the Federal Power Act. The FPA should be amended to make clear it does not preempt state water law.

Statement by the Honorable Dirk Kempthorne
United States Senator
Before the House Subcommittee on Water and Power Resources
Field Hearing on Federal Government Actions that
Affect Idahoan's Water Rights
October 5, 1995
in Boise, Idaho

I commend my colleague, Representative Chenoweth, for requesting that a hearing on this vital issue be held in Idaho. I appreciate Chairman Doolittle and the other House members' willingness to come so far to listen to Idahoan's concerns first hand. I also appreciate the effort of so many Idahoans who have also in many cases traveled far, and spent their own time and money to be present today.

The water rights that belong to the people of Idaho must not be compromised. I have no doubt that will be the message you will send loud and clear to Congress at this hearing. That is the message that I and the other members of the Idaho delegation have carried to Washington. We cannot allow someone on the Potomac River to tell those on the Snake River what to do with their water.

Idaho is water. Our communities depend on a stable, clean supply for every day use. Without it, over 3 million acres of productive agricultural land would return to sagebrush. Agriculture, the proud industry which accounts for a third of our state's economy, and is the foundation of our communities, would be crippled. The recreation industry, an increasingly important part of our state's economy, also depends on an abundant, dependable water supply.

There is no doubt that we face some tough choices about how to manage our water. Mother Nature is not always generous. But experience gained through drought years has made Idahoans adept at making choices and setting priorities.

Those choices will only get tougher as different demands on that limited water supply increase. But those choices must be made by Idahoans closest to the need and by those who have to live with the consequences of those choices. Idahoans must be the ones to make water use decisions for Idaho water as they see the need and the consequences.

This is one point on which we must not falter. Not when the federal government is proposing to make the people of Idaho carry the brunt of salmon recovery efforts by choosing a recovery plan that focuses on increased instream flows supplied from Idaho reservoirs.

We must not falter when the Bureau of Reclamation is proposing new irrigation and conservation regulations that, as drafted, would effectively overturn a century of established water relationships and farming practice in this State.

We must not falter when the Bureau of Reclamation seems intent on refocusing its mission, without any direction from Congress, to increase its role as a water manager and water controller.

This is why I have been perfectly clear that water rights are the domain of the state when I wrote my bill to reform the Endangered Species Act. Specifically, the bill says that any action taken under the Endangered Species Act "shall not create,...., a federal reserved water right." No action taken under the ESA can supersede water rights established by state law. Under my bill, the federal government could not require the transfer of water, or the right to water, as part the efforts to recover a species. And if water is needed as part of a recovery plan, the federal government must apply for it and use it under requirements set by the state.

I will introduce the ESA reform bill in the next few weeks. The comments, suggestions, time and effort spent by many of you and your fellow Idahoans have helped to make this ESA reform bill an Idaho bill for the nation. I am proud to take it forward, and work to bring common sense and balance to the ESA.

Common sense and balance are needed in all our laws relating to water supply and management. A national news paper carried an interesting quote just over a year ago, that "The next war will be over water." Those are not the words of an Idahoan. The quote was from Kathleen McGinty, the President's nominee to chair the Council on Environmental Quality. This Administration recognizes the importance of control of water supply. Let us make our laws so clear that the people of Idaho do not have to fight their own federal government for their water now.

I look forward to reviewing the record of this hearing.

FISH PASSAGE, INC.
825 E. State Street
Boise, Idaho 83712
(208) 342-1623
John R. Woodworth

BOYLAN FISH PIPELINE

TABLE OF CONTENTS

Exhibit 1 - Boylan Smolt Transport System

Exhibit 2 - Smolt Transport System Concept (Presentation to Morrison Knudsen)

Exhibit 3 - BSU Proposal to EPA for funding the test of the Boylan Pipeline

Exhibit 4 - Morrison Knudsen Corporation Preliminary Engineering Review

Exhibit 5 - Preliminary Evaluation - Oregon State University & University of Idaho

Exhibit 6 - Letter of endorsement from the Idaho Fish & Game Commission

Exhibit 7 - Letter of endorsement from biologist Dave Erickson

Exhibit 8 - Guest Opinion by John R. Woodworth in the Idaho Statesman

Exhibit 9 - Selected Letters:
- Letter to Governor Batt dated December 12, 1994
- Letter to Judge Malcolm F. Marsh dated April 14, 1994
- Letter to Senator Mark Hatfield (& to entire NW Congressional delegation) dated December 13, 1993
- Letter to Representative Peter A. DeFazio

Exhibit 10 - Selected articles from the Idaho Statesman

Exhibit 11 - Pipeline endorsements - 1995

Exhibits were made a part of Committee's official files.

IDAHO FARM BUREAU FEDERATION
P.O. Box 167 • 500 West Washington
Boise, Idaho 83701-0167 • (208) 342-2688
FAX (208) 342-8585

FOR THE RECORD

OVERSIGHT HEARING REGARDING BUREAU OF RECLAMATION WATER CLAIMS
written testimony
to
House Resources Subcommittee on Water and Power
by
Idaho Farm Bureau Federation
October 5, 1995
at
Boise, Idaho

Chairman Doolittle and distinguished members of the committee, the following is submitted as Idaho Farm Bureau testimony regarding the Bureau of Reclamations attempt to impose water conservation requirements on the farm and to secure water rights to all of the storage water within the state of Idaho.

Idaho is a state that historically only receives 10 to 12 inches of precipitation, so we must rely on our reservoirs to save spring runoff to meet summer demands for water. Agriculture is the largest consumer of water in the state of Idaho and with this great water resource the agriculture industry is able to produce an abundance of livestock and crops and annually contribute about 36% of the Idaho gross state economy. Each year our farms and ranches churn over $3 billion dollars into the state's economy and our agribusinesses add another 4 billion in value added products. Agriculture, and therefore irrigation, is the backbone and number one industry of the Idaho economy.

The Bureau of Reclamation has traditionally been a partner in creating a working, efficient and world envied agriculture. Development, assistance and understanding was a trademark of the old BOR and it saddens us to experience this new mindset that imposes mandatory farm conservation to free water to flush down the rivers in what we consider to be a non-beneficial use. It troubles us to see the BOR filing claims on all of the storage waters within our state and it frightens us to think of the consequences of loss of our irrigation water in the interest of the Endangered Species Act or any other reason. Idaho water is the most critical element in the survival of our state, our farms and our families and we will do everything humanely possible to prevent the loss of our water or our water rights.

The Idaho Farm Bureau Federation feels that the BOR is overstepping it's authority by trying to impose conservation on the farm or at the municipal level. The costs of complying would be enormous and could easily bankrupt individual farmers. The BOR has no mandate to require conservation and certainly lacks statutory authorization for administrative enforcement of such plans. We respectfully request that congress require the BOR to remove themselves from this effort and return to the specifically congressionally authorized role in water storage and use.

The Idaho Farm Bureau feels that the securing of storage rights by the BOR for all of the water in Idaho for BOR determined uses is illegal. Most of the facilities operated by the Bureau were specifically authorized by Congress for identified project purposes. Any use contrary to that authorization is illegal. We feel this grab for water rights is based upon a biological opinion that requires fish flush. The Biological opinion has no force of law and that it is advisory at best and has little if any scientific basis. Fish flush is still an experiment and yet the BOR seems willing to destroy an entire regions economy based upon this experiment. Again, we respectfully request that congress limit the BOR to their specifically authorized authority and get them out of this new adventure where water rights become a pawn in the gamble to save salmon under the Endangered Species Act. We feel our farming community has enough uncertainty with weather, pests, disease and prices. Why would we impose upon them the additional stress of taking their water.

The water spreading issue we consider a "bogus" issue. Under Idaho state law a water right is either used or lost. As our farmers adopted scientifically sound and progressive water management systems, the water saved could be utilized for additional ground. Oftentimes these were high spots that gravity flow would not reach. It did not require more water or larger water rights, it simply utilized the water right already granted the farm. Again, under Idaho Law, water not used can be lost and now the BOR wants those water savings and is declaring its use illegal. This is blatantly untrue and certainly beyond the congressional authority given the BOR. We again would request that Congress get the BOR out of this conservation mindset and return them to their traditional role.

We truly appreciate the committee coming to Boise,Idaho to listen to the concerns of our people and to learn of the tremendous importance of our water in our economic well being and our ultimate survival. We wish to especially thank Representative Helen Chenoweth for her role in bringing this hearing to Idaho and for being a champion of our concerns in this most critical issue.

Sincerely,

Tom Geary

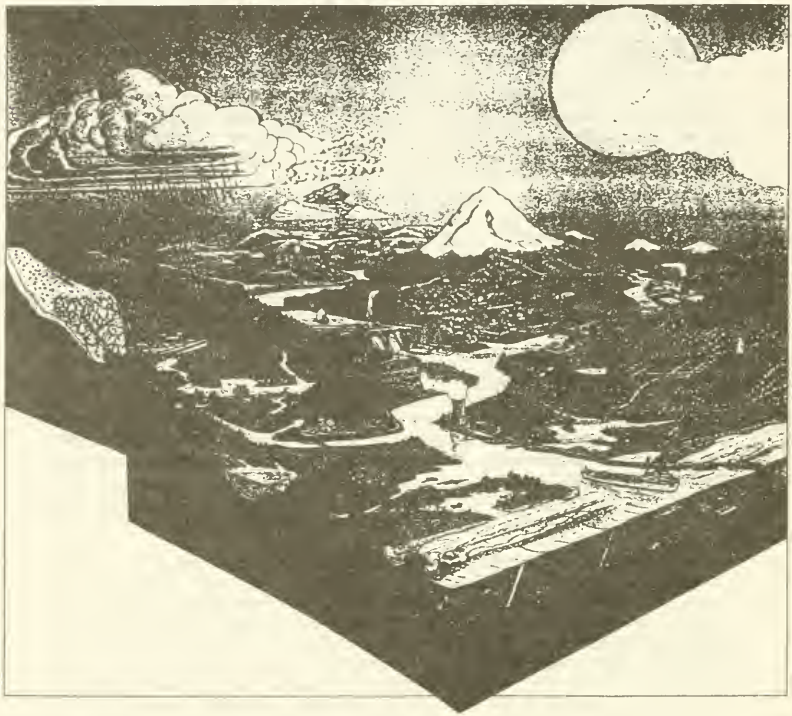
Tom Geary, President
Idaho Farm Bureau Federation

US Army Corps
of Engineers
North Pacific Division

CRT 49 (Revised)
Book No. 1

July 1989

Columbia River and Tributaries Review Study



PROJECT DATA AND OPERATING LIMITS

DWORSHAK DAM AND RESERVOIR

1. Project Description

Stream: ..... North Fork Clearwater (R.M. 1.9)
Location: ..... Ahsahka, Idaho
Owner: ..... U.S. Army Corps of Engineers, Walla Walla District
Project Authorization: ..... PL 87-874, 1962
Authorized Purpose: ..... Flood Control, Power, Navigation
Other Uses: ..... Fishery, Recreation
Type of Project: ..... Storage

Dworshak dam and reservioir

2. Status – History

The initial project construction begun in 1963, including units 1 thru 3 powerhouse. The additional unit 4 thru 6 are authorized but not scheduled. Present project completed 1973.

3. Lake Elevation (ft)

Maximum pool	1,604.7
Full pool	1,600.0 1/
Minimum pool	1,445.0
Usable storage (1,600.0 to 1,445.0)	2,015,800 AF
Rule curves for flood control	
September 1	1,600.0
October 1	1,586.0
November 15	1,579.0
December 15	1,558.0

Flood control space required by snow covered area

Snow Covered Area Percent	Inviolate Space 1,000 AF	Requirement Elev.
100	700	1,558.3
80	540	1,588.6
80	385	1,578.1
40	230	1,587.2
20	80	1,595.6
	100	1,600.0

Boat Ramp access	
Big Eddy	1,445
Bruces Eddy (large ramp)	1,550
(small ramp)	1,448
Canyon Creek	1,550
Freeman Creek	1,530
Dent	1,530
Grandad	1,550
Commercial log transportation	
Log dumps	1,580

4. Discharge 2/

Minimum	1,000
Maximum weekly average (Oct 1–Nov 15) 3/	inflow plus 1,300
Rate of change (Peck Gage)	
Hourly	1 ft 4/
24-Hour (Oct 1–Nov 15) 3/	40% of previous 5/ weekly avg outflow
Downstream flood control limit Clearwater River at Spalding	
Bank full	85,000
Flood stage	105,000
Lewiston levee capacity	150,000

5. Powerhouse

Number of units	3
Nameplate capacity (2 @ 90 MW, 1 @ 220 MW)	400 MW
Continuous overload capacity (2 @ 103.5 MW, 1 @ 253 MW	460 MW
Hydraulic capacity	10,500 cfs

Description	Basis for Operating Limits
Rule curves established for winter flood control and fall steelhead fishing.	
Log handlers cannot put logs in reservoir unless it is at Elevation 1,580.0 feet or above.	
Discharge: Compromise of needs for power, flood control, recreation, fish, wildlife and public safety. As measured at stream gaging station Clearwater River near Peck. Established based on downstream flood experience. Standard project flood used for design.	

1/ Lake may be temporarily surcharged to elevation 1,600.5 feet if this prevents spill, no flood is forecasted, definite benefits are realized, and NPW approves.

2/ Project needs 2 hrs advance notice to notify hatchery when project switches from genera tion to spill or vice versa.

3/ Prime steelhead harvest season, date may vary slightly. Limits not to be exceeded except during freshets or emergency power operations.

4/ Normal operations procedures is to schedule outflow changes not to exceed 0.5 ft/half-hour Peck.

5/ The maximum change during the first 7 days of the steelhead harvest season will be 40 percent of the sum of 1,300 cfs plus the previous 7-day average, inflow.

Release Limitation

Maximum cfs per hour change at Dworshak resulting in 1 ft per hour change of stage at Peck Gaging Station

Increasing Releases		Decreasing Releases	
Starting Peck Flow cfs	Max Change at DWR cfs	Starting Peck Flow cfs	Max Change at DWR cfs
2,000-3,000	1,700	3,500-4,700	- 1,700
3,100-5,000	2,200	4,800-7,200	- 2,200
5,100-7,000	2,700	7,300-9,800	- 2,700
7,100-9,000	3,100	9,700-11,900	- 3,100
9,100-11,000	3,500	12,000-14,400	- 3,500
11,100-13,000	4,000	14,500-16,900	- 4,000
13,100-15,000	4,400	17,000-19,000	- 4,400
15,100-17,000	4,800	19,100-21,400	- 4,800
17,100-19,000	5,000	21,500-23,500	- 5,000
19,100-24,000	5,200	23,600-28,800	- 5,200
24,100-28,000	5,600	28,900-33,200	- 5,600
28,200-33,000	6,100	33,300-38,700	- 6,100
33,100-49,000	6,600	38,800-50,200	- 6,600
49,100-57,000	7,200	50,300-63,700	- 7,200
57,100-78,000	7,700	63,800-85,200	- 7,700
78,100	8,300	85,200	-8,300

BOSTON PUBLIC LIBRARY
3 9999 05984 142 7

MICHAEL D. CRAPO
2D DISTRICT, IDAHO
HOUSE REPUBLICAN LEADERSHIP
103D CLASS LEADER
DEPUTY WHIP
WESTERN UNITED STATES
REPUBLICAN POLICY COMMITTEE
BEEF CAUCUS, CO CHAIRMAN
CONGRESSIONAL RURAL CAUCUS
CONGRESSIONAL SPORTSMEN'S CAUCUS
CONGRESSIONAL WATER CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515–1202

COMMERCE COMMITTEE
SUBCOMMITTEES
COMMERCE, TRADE, AND HAZARDOUS MATERIALS
ENERGY AND POWER
OVERSIGHT AND INVESTIGATIONS
AGRICULTURE COMMITTEE
SUBCOMMITTEES
RESOURCE CONSERVATION, RESEARCH, AND FORESTRY
DEPARTMENT OPERATIONS, NUTRITION, AND FOREIGN AGRICULTURE

THE HONORABLE MIKE CRAPO
TESTIMONY BEFORE THE SUBCOMMITTEE ON WATER AND POWER RESOURCES
RESOURCES COMMITTEE
OCTOBER 4, 1995

THANK YOU CONGRESSMAN DOOLITTLE AND CONGRESSMAN CHENOWETH FOR HOLDING THIS EXTREMELY IMPORTANT HEARING. I APOLOGIZE FOR NOT BEING ABLE TO ATTEND.

I TOO AM CONCERNED THAT THE PRESENT ADMINISTRATION IS SETTING THE STAGE FOR JUST WHAT YOU FEAR--THE FEDERAL GOVERNMENT IGNORING ALL STATUTORY PROVISIONS CONCERNING WATER CONTRACTS.

IT IS IMPERATIVE THAT THE STATE OF IDAHO MAINTAIN SOVEREIGNTY OVER HER WATER AND RIVER SYSTEMS. ALL RIGHTS TO WATER OR RESERVATIONS OF RIGHTS FOR ANY PURPOSE IN THE STATE OF IDAHO SHOULD BE SUBJECT TO THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF IDAHO, NOT THE FEDERAL GOVERNMENT. I SUPPORT OVERTURNING THE ROCK CREEK DECISION OF THE UNITED STATES SUPREME COURT WHICH ALLOWED GOVERNMENT INTRUSION INTO THE CONTROL OF STATE WATERS.

IN THE PAST, CONGRESS HAS REPEATEDLY DEMONSTRATED A SENSITIVITY TO THE NEED FOR STABILITY IN THE WESTERN STATES' REGULATION OF THEIR WATER SUPPLIES BY DEFERRING TO STATE LAW. HOWEVER, THE CLINTON ADMINISTRATION HAS REPEATEDLY CHALLENGED THE PRINCIPLE OF STATE WATER MANAGEMENT.

THIS IS THE SIXTH TIME WITHIN 2 YEARS THAT I HAVE EITHER TESTIFIED BEFORE CONGRESSIONAL BODIES OR CORRESPONDED WITH THE CLINTON ADMINISTRATION CONCERNING FEDERAL INTRUSION INTO IDAHO'S SOVEREIGNTY OVER ITS WATER. I AM DEEPLY CONCERNED THAT THE CLINTON ADMINISTRATION, THE BUREAU OF RECLAMATION, THE NATIONAL MARINE FISHERIES SERVICE AND SOME IN CONGRESS ARE SETTING THE STAGE FOR IGNORING LONG ESTABLISHED STATUTORY PROVISIONS CONCERNING STATE WATER RIGHTS AND STATE WATER CONTRACTS.

THE BUREAU'S PROPOSED REGULATIONS, THE ENDANGERED SPECIES ACT, THE CLEAN WATER ACT, SALMON RECOVERY PLANS, RANGELAND REFORM, AND PROPOSED WILDERNESS LEGISLATION HAVE BEEN VEHICLES USED TO ERODE STATE SOVEREIGNTY OVER ITS WATER. IT IS IMPERATIVE THAT STATES MAINTAIN SOVEREIGNTY OVER MANAGEMENT AND CONTROL OF THEIR WATER AND RIVER SYSTEMS. ALL RIGHTS TO WATER OR RESERVATIONS OF RIGHTS FOR ANY PURPOSE IN THE STATE OF IDAHO SHOULD BE SUBJECT TO THE SUBSTANTIVE AND PROCEDURAL LAWS OF THE STATE OF IDAHO, NOT THE FEDERAL GOVERNMENT.

☐ WASHINGTON, DC
437 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225–5531

☐ 304 NORTH 8th STREET
ROOM 325
BOISE, ID 83702
(208) 334–1953

☐ 2539 CHANNING WAY
SUITE 330
IDAHO FALLS, ID 83404
(208) 523–6701

☐ FEDERAL BUILDING
250 SOUTH 4th, ROOM 220
POCATELLO, ID 83201
(208) 236–6734

☐ 828 BLUE LAKES BLVD., NORTH
TWIN FALLS, ID 83301
(208) 734–7219

THESE REGULATIONS, IF ADOPTED, SET A COURSE NEVER ESTABLISHED IN LEGISLATION FOR THE BUREAU OF RECLAMATION. THEY ARE A STEP BACKWARD AT A TIME WHEN CONGRESS IS TAKING GREAT STEPS TOWARDS REDUCING REGULATORY BURDENS ON THE AMERICAN PEOPLE, AND STREAMLINING FEDERAL ADMINISTRATION. WHILE THE BUREAU CONTENDS THAT THESE REGULATIONS ARE TO "CLARIFY" EXISTING REGULATIONS, THEY WILL INSTEAD UNDERMINE WESTERN FARM RELATED BUSINESSES, SMALL FAMILY FARMS AND IDAHO'S SOVEREIGNTY OVER ITS WATER.

THESE PROPOSED REGULATIONS INCORPORATE DOZENS OF PAGES OF HIGHLY DETAILED AND SPECIFIC REQUIREMENTS REGARDING WATER CONSERVATION. IRRIGATION DISTRICTS AND MUNICIPAL WATER ENTITIES MUST FOLLOW THESE REQUIREMENTS OR RISK THE ULTIMATE LOSS OF THEIR WATER STORAGE CONTRACTS AND OTHER DISCRETIONARY RECLAMATION ACT PROGRAMS BENEFITS. THE BUREAU IS TRYING TO ADOPT THESE GUIDELINES IN A INFORMAL ADMINISTRATIVE RULEMAKING PROCESS. THIS SUBVERSIVE TECHNIQUE IS DESIGNED TO KEEP THOSE MOST AFFECTED BY THE BUREAU'S PROPOSED RULEMAKING FROM UNDERSTANDING THE FULL IMPLICATIONS OF THE PROPOSED REGULATIONS.

BEING A SEMI-ARID STATE, IDAHO'S GROWTH AND DEVELOPMENT HAS BEEN INTIMATELY LINKED TO WATER AND ITS AVAILABILITY. UNFORTUNATELY, THE BUREAU'S PROPOSED REGULATIONS THREATEN THE FUTURE OF IDAHO'S AGRICULTURE COMMUNITY, PARTICULARLY THAT SEGMENT DEPENDING UPON IRRIGATION WATER FROM FEDERAL RECLAMATION PROJECTS.

I HAVE WRITTEN THE CLINTON ADMINISTRATION AND REQUESTED THAT HE INSTRUCT THE BUREAU OF WITHDRAW THESE PROPOSED REGULATIONS. I WILL BE INTRODUCING LEGISLATION UPON RETURNING TO WASHINGTON TO PRESERVE THE AUTHORITY OF THE STATES OVER WATER WITHIN THEIR BOUNDARIES. MY LEGISLATION, THE STATE WATER SOVEREIGNTY PROTECTION ACT WILL MANDATE THAT WHENEVER THE UNITED STATES SEEKS TO APPROPRIATE WATER OR ACQUIRE A WATER RIGHT WITHIN A STATE, THE UNITED STATES SHALL BE SUBJECT TO ALL PROCEDURAL AND SUBSTANTIVE LAWS OF THE STATE RELATING TO THE ALLOCATION, ADJUDICATION, APPROPRIATION, ACQUISITION, USE AND EXERCISE OF WATER RIGHTS.

I AGAIN WANT TO THANK CHAIRMAN DOOLITTLE AND CONGRESSMAN CHENOWETH FOR HOLDING THIS VERY IMPORTANT HEARING.

○

ISBN 0-16-052227-7

90000

9 780160 522277